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1
2 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
3
4 FOR THE COUNTY OF LOS ANGELES
5
6
7 FREDRIC RELLER,)
Plaintiff,)
8 vs.) Case No. BC 261796
PHILIP MORRIS INCORPORATED,)
9 a corporation, et al.,)
Defendants)
10 _____)
11

DEPOSITION OF

12 DAVID TEECE

13

TUESDAY, MAY 6, 2003

14

9:30 A.M.

15

11755 WILSHIRE BOULEVARD

16 SUITE 1170

LOS ANGELES, CALIFORNIA 90025

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1 Deposition of DAVID TEECE, called as a witness by
2 the Plaintiff, before JENNIFER A. HINES, Certified
3 Shorthand Reporter Number 6029/RPR/CRR, for the State of
4 California, with principal office in the County of Los
5 Angeles, commencing at 9:30 a.m., Tuesday, May 6, 2003,
at
6 11755 Wilshire Boulevard, Suite 1170, Los Angeles,
7 California.

8 * * *

9

APPEARANCES OF COUNSEL:

10

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3

1 APPEARANCES OF COUNSEL:

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6 (NOT PRESENT)

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1

2 I N D E X

Examination Page

3 By Mr. Goldstein 5

4

5

PLAINTIFF'S EXHIBITS

6

1 Summary of Testimony Topics,

7 1 page *

8

2 Enterprise Research, Inc.,

9 Invoices, 8 pages *

10

3 Frederic Reller vs. Philip Morris

11 Materials Reviewed by David J.

Teece, 21 pages *

12

13 4 Vita of David J. Teece dated
May, 2003, 19 pages *

14

15 5 Next Scheduled Court Appearance
Document on United States of
16 America vs. Philip Morris case,
202 pages, *

17

18 6 Letter dated April 3, 2000, to
Dewey Ballantine from James
19 Rosenthal, with attachments,
16 pages *

20

21 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER
22 (None.)

23

24 INFORMATION REQUESTED
25 (None.)

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5

1 DAVID TEECE,
2 called as a witness by and on behalf of the Plaintiff,
3 having been first duly sworn by the court reporter, was
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. GOLDSTEIN:

7 Q Could you please state your full name for the
8 record.

9 A David John Teece, T-E-E-C-E.

10 Q And it's Dr. Teece; correct?

11 A Yes.

12 Q You've had your deposition taken before, have you
13 not?

14 A Yes.

15 Q I'm sure this will be repetitive, but let me just
16 go over some of the ground rules, if we could.

17 The oath that you just took is an oath to tell
18 the truth, and it's the same oath that would be given in

a

19 court of law.

20 You understand that; right?

21 A I do.

22 Q If for some reason you don't understand a
23 question or want to speak with either of your counsel,
you

24 may do so.

25 Let me ask you, who's representing you at this

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6

1 deposition, which of these ladies, or both?

2 A I understand Michelle Browdy is.

3 MR. GOLDSTEIN: Just my naivete. I don't know
4 everybody who is in this yet.

5 Q At the end of this deposition, you will be
6 provided with a copy of the deposition in booklet form,
and

7 you'll be given an opportunity to review it, make any
8 changes and sign it. However, if you do make any changes
9 of a substantive nature, you understand that they may be
10 commented upon at trial, and then may prove to be
11 embarrassing.

12 Do you understand that?

13 A I understand.

14 Q Okay. You're not under the influence of any
15 medication that would impair you giving your best
testimony
16 today, are you?
17 A No.
18 Q Could you please state your residence address.
19 A [DELETED].
20 Q And I understand that you have been designated as
21 an expert witness in this case; is that right?
22 A That's my understanding.
23 Q Could you first tell me what opinions you intend
24 on offering at trial?
25 A Well, I've provided you with an outline, a
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7
1 one-page outline, which I think at least in summary form
2 will be a useful guide.
3 Q Is that in front of us?
4 A Yes, it is.
5 Q Okay. Why don't we just have that marked as
6 Plaintiff's 1. I'll just make a little "1" on the corner.
7 (Plaintiff's Exhibit 1 was marked
8 for identification by the Court Reporter
9 and a copy is attached hereto.)
10 BY MR. GOLDSTEIN:
11 Do you want to read from it? Does that help you?
12 A I will -- I would like to have it in front of me
13 as I answer your questions. I probably won't read from
14 it, but I can certainly go through these major headings
15 here --
16 Q Okay.
17 A -- and indicate what the key opinions are.
18 There's obviously a lot that's covered here.
19 Q Well, what I'd like to do is just -- let me take
20 a look at it first. I haven't really had it. That would
21 probably be a good thing, to familiarize myself with it.
22 MS. BROWDY: I may have another copy.
23 BY MR. GOLDSTEIN:
24 Q Doctor, did you conduct an investigation of the
25 matters about which you're prepared to testify?
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8
1 A Yes.
2 Q Over what period of time?
3 A On this matter I believe I have been retained for
4 perhaps six months, something like that. My invoices will
5 more fully reflect when I worked on this matter, but I
have
6 been exposed to some of the issues in this case before,
in
7 particular in the U.S. case where similar allegations
were
8 made. So I have been reviewing these issues for a period
9 that goes back a number of years.
10 Q Ellis --
11 MS. BROWDY: I don't know if you want to mark it
12 as an exhibit, but as I mentioned, one of the things we
13 brought with us today is his report from the U.S. suit
as
14 well as an index in CD-ROM for the backup to that
material.
15 As I said, I don't know if you want to formally mark it
for

16 the record.
17 MR. GOLDSTEIN: I'll take a peak at it maybe
18 during the breaks.
19 Q Did there come a point in time in your career
20 when you were first contacted by a member of the tobacco
21 industry to render expert opinion?
22 A Yes.
23 Q And when was the first time you can recall having
24 been contacted?
25 A I don't recall precisely. But it was four or
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9
1 five years ago, I believe.
2 Q Prior to the time you were first contacted, had
3 you done any work or published -- had you published any
4 articles on the subject of punitive damages?
5 A No. I had talked around damages and I had
6 worked on damages, but I hadn't published anything on
7 damages as such.
8 Q How was it that you were made to understand that
9 the first contact was made or the introduction was made
10 from somebody in the tobacco industry to you?
11 A Well, it was through outside counsel. I believe
12 one of the outside counsel approached me on antitrust
13 issues.
14 Q And who was that counsel?
15 A Mr. McDermott.
16 Q And he's with what firm?
17 A I believe it's Jones, Day.
18 Q And what case did he ask you to testify in?
19 A I'm not sure he asked me to testify.
20 Q Okay. What can you recall of the first
21 conversation you had with him?
22 A I don't recall very much of anything other than
23 that there were allegations of conspiracy with respect
to
24 the suppression of information on the health effects of
25 smoking, and also there were allegations of conspiracy
with
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10
1 respect to the suppression of innovation around a safer
2 cigarette.
3 Q And prior to the time he exposed those two issues
4 to you, had you developed any degree of expertise in
either
5 of those fields?
6 A Yes. I have written for many years on
7 innovation and on antitrust, and he was approaching me
with
8 two issues that were precisely in my area of expertise,
9 although I had not to that point looked at --
specifically
10 at tobacco.
11 The whole question of innovation, the issue of
12 innovation and whether or not one could control a market
13 for innovation, and likewise whether one could control a
14 market for information, were central to my thinking and
15 were certainly a component of my academic research.
16 Q The document that we marked as Exhibit 1 is an
17 outline. Is that something that you prepared?
18 A Yes.
19 Q Did you do it yourself?

20 A Yes. With the assistance of Dr. Ingberman,
21 who's a staff person that works with me.

22 Q Can you spell that person's name?

23 A I-N-G-B-E-R-M-A-N.

24 Q Did Dr. Ingberman ever testify in any of these

25 tobacco matters that you're aware of?

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11

1 A I'm not sure he has. He's worked with me on a

2 number of matters, some of which have been on tobacco,

many

3 of which are not.

4 Q All right. Let's go through the list. Would

5 it be fair to state that the five categories that are

6 numbered Roman numerals I through V on Exhibit 1 comprise

7 the broad, overall categories that you're prepared to

8 testify about, or the premises actually you're prepared

to

9 testify about?

10 MS. BROWDY: Objection to the form of the

11 question.

12 You can answer if you can.

13 THE WITNESS: This is very much a high level

14 summary. I think if you look at the U.S. report, for

15 instance, you'll find quite a lot more categories in

there

16 of things that I've written on, and if asked, I'm

prepared

17 to testify on.

18 This is an effort to get my opinions on to one

19 page and is necessarily a summary statement.

20 Having said that, the two key issues that I'm

21 looking at are allegations of conspiracy with respect to

22 the suppression of information on the health effects of

23 smoking, and allegations of conspiracy with respect to

24 suppressing a safer cigarette or the technology relating

to

25 a safer cigarette, and this one-page outline begins by

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12

1 identifying the context and then goes on to outline key

2 areas that I will cover. Or can cover if asked.

3 BY MR. GOLDSTEIN:

4 Q What tobacco companies have specifically paid you

5 money to testify as an expert witness?

6 MS. BROWDY: Objection to the form. Overbroad.

7 You can answer if you can.

8 BY MR. GOLDSTEIN:

9 Q Well, let me ask you: Excluding -- strike that.

10 Is it correct that the only monies that you've

11 ever received from any tobacco company that you're aware

of

12 have to do with your rendering of expert testimony?

13 A No.

14 Q Okay. What other -- let me ask you. Aside

15 from testifying as an expert witness both in deposition

or

16 in connection with litigated matters, what other work

have

17 you performed for any tobacco company?

18 A Typically I've been retained first as a

19 consultant, and at some point I'll be designated as an

20 expert, so I think it would be fair to say that when I

have

21 been retained as a consultant, it's in anticipation of
22 possible involvement in litigation, but the litigation
23 might have gone away or something may have changed, and
I

24 haven't actually testified.

25 Q Okay. But by question, I meant to find out
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13

1 if there are any other categories of work that you
2 performed other than, let's say, in the legal context,
and
3 by legal context, I meant to include work you performed
in
4 anticipation of you serving in some expert capacity in a
5 tobacco litigation.

6 A Not that I'm aware of.

7 Q Okay.

8 So it would be fair to state that of all of the
9 work which you have performed for any tobacco company has
10 been in the context of some type of litigation in which
you

11 were either a consultant or an expert; correct?

12 A That would be fair.

13 Q Have you ever done any uncompensated work for any
14 tobacco company?

15 A No. Not in the sense that I've taken a pro bono
16 assignment. I've sometimes given public lectures and
17 frequently do so where I'm not paid and someone from the
18 tobacco industry could have been in the audience, but
other

19 than that, I've not actually taken on a specific
assignment

20 for the tobacco industry of a pro bono kind.

21 Q You're charging \$750 an hour for rendering your
22 testimony in this deposition; correct?

23 A Yes.

24 Q How much do you charge for testimony that you
25 render at trial?

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14

1 A Same, 750.

2 Q And how about as a consultant?

3 A Same rate.

4 Q How many hours have you spent in connection with
5 the Reller case for which you've provided information?

6 A I believe I've provided you invoices.

7 Q Do you know offhand approximately how much it is?

8 A No. But I can quickly add those up.

9 Q Let me have marked as Plaintiff's 2 the documents
10 that you rendered to me, and I'd like you just to take a
11 look at it and see if the documents which are attached
as

12 Exhibit 2 contain all the billing that you have rendered
to
13 them in connection with this case.

14 A I believe so, yes.

15 (Plaintiff's Exhibit 2 was marked
16 for identification by the Court Reporter
17 and a copy is attached hereto.)

18 BY MR. GOLDSTEIN:

19 Q Have you rendered any written reports to them on
20 this case?

21 A No.
22 Q Have you exchanged any written correspondence or
23 e-mails containing any kind of communications which
reflect
24 any opinions that you are going to give or were asked to
25 give in this case?

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15

1 A No.
2 Q Is there a reason that all communications were
3 oral?
4 A It's the way I typically work. I have created a
5 one-page outline of my opinions, but I didn't -- I
adopted
6 the same style of work here that I do on other matters.
7 Q All right. Please tell me what you reviewed
8 prior to -- in preparation of your testimony today, what
9 documents did you review?

10 A I re-read my U.S. report and I looked at a number
11 of other --

12 Q A document that's 21 pages, and I'll mark it as
13 Exhibit 3, which you provided us.

14 (Plaintiff's Exhibit 3 was marked
15 for identification by the Court Reporter
16 and a copy is attached hereto.)

17 BY MR. GOLDSTEIN:

18 Q At the top it says "Materials reviewed" by you.
19 Is that correct?

20 A Correct.

21 Q I note that the typestyle on that Exhibit 3
22 varies from Exhibit 1. Did you create the document
that's

23 Exhibit 3?

24 A This was created under my direction.

25 Q Okay. By who?

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16

1 A Dr. Ingberman.

2 Q That was physically printed at your office?

3 A I don't know for sure whether that's the case.

4 Q Did any attorney -- I'll give you an example --
5 well, did any attorney -- strike that. I'll rephrase.

6 Did any attorney prepare that for you to submit
7 today?

8 A No. It was prepared by Dr. Ingberman.

9 Q All right. And how did that list come about?

10 Did you give him materials to include in that?

11 A Let me give you a little context of when I'm
12 preparing for deposition. I usually ask whoever it is
13 that's working with me to assemble case materials in a
14 conference room, and we spend time going through the
15 issues, and at the end of that process, I ask whoever it
is

16 in this case, Dr. Ingberman, to start assembling a list
of

17 the materials that I've reviewed to make sure that we're
in

18 a position to disclose them to you.

19 Q So it's your testimony that the materials that
20 were -- that are listed on Exhibit 3 were somehow
assembled

21 at some point recently on a table from which that list
was

22 drawn; is that right?

23 A Usually I assemble them or ask them to be
24 assembled into binders. Whether those binders actually
25 make it on to a table or not, I can't tell you that.

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17

1 Sometimes they sit in a cart.

2 Q That's fine. But wherever they're physically
3 located, you selected those materials to be pulled for
4 inclusion in Exhibit 3; correct?

5 A Dr. Ingberman and I did so. He certainly would
6 have included everything that I've looked at, and
sometimes

7 he'll draw to my attention materials. If I think they're
8 useful and want to rely on them in any way, they'll be
9 included.

10 Q So does he have the ability to include materials
11 independent of you?

12 A Well, he would usually point it out to me if he
13 did, but if there was something that he thought that I
14 should be aware of, yes, he can draw it to my attention.

15 Q Okay. Just so that I'm clear, then, whether he
16 brought it to your attention or you physically selected
the

17 materials, you had a hand in selection of each of those
18 matters that are contained on Exhibit 3 for inclusion in
19 that list; right?

20 A Well, all depends what you mean by "had a hand."

21 Q Well, let's --

22 Is it possible that a number of those materials
23 were included as materials in your reliance materials
which

24 you never relied upon?

25 A It's possible there may be some issue -- some

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18

1 articles in here or some documents that I may not have
read

2 but my staff have read, and to the extent to which in my
3 discussions with them they have determined that it may be
4 relevant to opinions that I will give, yes, they are
5 Dr. Ingberman -- he would be under my instruction to
6 include that document. In fact, it is my general
approach.

7 Q So to answer my question, you can't say as you
8 sit here today with certainly that each of the documents
9 that are listed on the 21 pages that comprise Exhibit 3
10 were documents that you personally have relied upon in
the

11 forming of your opinions; is that correct?

12 A Could I have that question read back?

13 (The pending question was read
14 back by the Court Reporter as follows:

15 "Q So to answer my question, you
16 can't say as you sit here today with
17 certainly that each of the documents
18 that are listed on the 21 pages that
19 comprise Exhibit 3 were documents that
20 you personally have relied upon in the
21 forming of your opinions; is that
22 correct?")

23 THE WITNESS: Well, certainly, you know, I've

24 read many of these documents. In some cases I've read

them

25 several times. I haven't read everything that's in these
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19

1 documents, but I've read much of what is in them, in some
2 cases several times.

3 There may be one or two items on here that

4 Dr. Ingberman has included where he thinks it's relevant
to

5 things that -- to opinions that I have articulated, and
I'm

6 sure he will have shown it to me and I would have said,

7 yes, we should include that.

8 I do not represent that I've read every single

9 word, sentence, paragraph that's in these documents.

10 BY MR. GOLDSTEIN:

11 Q What is your understanding of the reason for

12 putting forth a list of reliance documents?

13 A So that you'll be in a position to properly

14 cross-examine me in deposition and in trial with respect
to

15 the bases of my opinions.

16 Q Right.

17 Now, do you know an attorney named Steven Mikers

18 at the /TK*EUF /TKEUB /PWA /SRORS and preliminary
continue

19 form in New York?

20 A No, I don't.

21 Q Have you produced similar reliance document lists

22 similar to number 3 in other litigations in which you've
23 been a party?

24 A What do you mean by "similar"?

25 Q Well, do you have a core set of documents that

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20

1 comprise your reliance documents that you will print out
in

2 a particular tobacco case, rather than compiling a list
for

3 an individual case?

4 A No, I don't. I mean this is compiled here for

5 Reller. I did give you a list that's based on materials

6 that are footnoted and relied upon to create my U.S.

7 report.

8 That I have -- certainly those documents I have

9 presented in the U.S. -- in the U.S. case or I've

10 identified them in the U.S. case, and since I'm

providing

11 you -- since I'm providing you with the report, I

thought

12 it appropriate to do so again here.

13 Q Okay.

14 A But this is -- this list is specific to Reller

15 and to the opinions that I expect to give in this case.

16 Q Okay. How long did it take for that list to be

17 compiled, if you know?

18 A I don't know for sure.

19 Q What's your best estimate of time?

20 A A few hours.

21 Q And did you charge somebody for the preparation

22 of that list?

23 A Did I personally charge somebody?

24 Q Well, did your company provide -- render a bill

25 to someone for compiling a list of reliance materials?

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21

1 A I don't know for sure whether they have, but I

2 expect that they will if they haven't.

3 Q Okay. Other than the bills which you've

4 produced here today which we've marked as Exhibit 2, how

5 much unbilled time has been expended by you and your firm

6 that has yet to be billed to Ms. Browdy or her firm?

7 A First of all, when you refer to "my firm," I'm

8 one of many members of LACG. So I do not know how much

9 unbilled time LACG has with respect to Reller.

10 I do -- I've just reviewed my invoices here, and

11 I believe this is current as of the end of last month.

12 Let me just check. Yes, this is through April, so there

13 is no -- well, there is unbilled time for the month of

May

14 in my case that will be rendered at the end of this

month.

15 Q Can you give me an approximation of how much time

16 you have spent other than what's reflected here in the

17 billing?

18 A It would be another 20 or 30 hours.

19 Q And how was that spent?

20 A I had a meeting in Emeryville with Ms. Browdy, I

21 had several meetings with my staff, and I spent time

22 reading some articles and books and reread my U.S.

report,

23 spent travel time getting down here.

24 Q The travel time is also billed at 750 an hour; is

25 that right?

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22

1 A Yes.

2 Q Did you fly commercial aircraft?

3 A Yes.

4 Q And what staff members did you meet with in

5 preparation for this deposition?

6 A Dr. Ingberman.

7 Q Anyone else?

8 A No.

9 Q How much time did you -- is it a him or a her?

10 A It's a him.

11 Q What's his first name?

12 A Dan.

13 Q How much time did you spend with him?

14 A Over what time period?

15 Q Well, that's unbilled that you mentioned that

16 comprise the 20, 30 hours.

17 A 10, 15 hours.

18 Q And what did it consist of, your discussions with

19 him, to prepare for this deposition?

20 A One part of it was reminding me of some of the

21 factual issues. Needless to say, I do lots of things

22 including I have an active teaching schedule, and my

whole

23 life is not spent around tobacco litigation, so I forget

24 facts. And so he will typically remind me of facts,

25 remind me of particular articles that I've read in the

past

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23

1 and things that I need to refresh my memory on.

2 Q All right. Let me digress for a minute and just
3 ask you to tell me about what your life -- your work life
4 consists of. I'd like to know when I leave here today,
5 I'd like to get a good understanding of what it is you do
6 other than doing -- testifying in tobacco.
7 Could you explain that for me, please. I can
8 ask you specific questions if you like.

9 A Sure.

10 Q Okay.

11 A I can give you a thumbnail sketch. For one, I'm
12 a professor at the University of California, Berkeley.
In
13 that context, I teach, I do research.
14 I'm also the director of a campus-wide research
15 institute called the Institute for Management Innovation
16 and Organization.
17 In that context I am involved in stimulating
18 research on topical subjects, starting programs,
managing
19 programs, securing grounds, organizing conferences,
running
20 prizes and awards, and also in that context I have
played
21 an instrumental role in establishing a business school
in
22 Russia, which I've been doing for the last 10 to 15
years.
23 My formal appointment is half time at the
24 university at this point. I actually do what's I think
25 close to full-time work, but I'm on the payroll half
time,

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24

1 and that's half of the academic year.

2 Q From when to when, basically?

3 A Well, the academic year begins in September and
4 runs through to June.

5 Q Okay. So pretty much during that period of time
6 you are consumed with your full-time professorship
7 activities at U.C. Berkley even though you're compensated
8 half time?

9 A I wouldn't put it quite that way. I perform as
10 if -- I meet the performance steps that are required or
the

11 performance metrics that are required for a full-time
12 professor with respect to teaching and research and
13 programmatic activities. In fact, I usually exceed
those.

14 Q I don't want to -- sorry, go ahead.

15 A So that's one part of my life.

16 The other part of my life is -- or one other part
17 of my life is I do expert -- I provide consulting
services

18 around disputes and decisions so that in a managerial
19 context, some of that's in a litigation context.

20 I'm also chairman of LACG, which is an expert
21 services firm, and as chairman of the board, I'm active
in
22 setting strategy for the firm.

23 In addition to that, I sit on a number of other
24 boards of directors, usually small companies. Frequently
25 ones that I've started myself or at least had a hand in
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25

1 starting.

2 And I'm active with certain community activities,
3 in particular ones relating to education.

4 Q All right. Do you have any other residences
5 other than the [DELETED]?

6 A Not in [DELETED] no.

7 Q No, I didn't ask you in [DELETED]

8 A Oh, sorry.

9 Q I want to know if you have any other residences
10 anywhere other than [DELETED].

11 A Yes.

12 Q Where else do you have residences?

13 A [DELETED].

14 Q [DELETED]? Is it [DELETED]?

15 A No, it's not [DELETED] but it's near
16 [DELETED].

17 Q Okay.

18 A And Australia and New Zealand.

19 Q Okay. Can I get the addresses of those
20 properties, please. Or where you maintain those
21 residences, if you know them.

22 A I can tell you the general areas. I'm not sure
23 I actually know the street addresses.

24 Q Okay.

25 A In Australia it's in a port city called
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1 [DELETED], and in New Zealand it's in a district called
2 [DELETED].

3 Q Okay. Are you an American citizen?

4 A Yes.

5 Q And do you hold dual citizenship?

6 A Yes.

7 Q With New Zealand; right?

8 A Correct.

9 Q When did you become an American citizen?

10 A About 20 years ago.

11 Q And where did you live prior to the [DELETED]
12 address?

13 A Los Altos, California.

14 Q And for what period of time did you live there?

15 A In 1976 to 1982.

16 Q Okay. And then -- so you moved directly from
17 the Los Altos location to the [DELETED] address?

18 A I rented an apartment in San Francisco in the
19 interim.

20 Q And what were you doing in San Francisco during
21 that period of time?

22 A I was on the faculty at Berkeley living in San
23 Francisco.

24 Q Do you teach any courses now?

25 A Yes.

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1 Q And what courses do you teach?

2 A I've been teaching two classes, one on the
3 management of technology and innovation, one at the MBA
4 level and one at the Ph.D level. They deal both with
5 public policy and managerial issues.

6 Q And how often do you teach those courses when
7 school is in session?

8 A Yes, usually once a semester -- well, one

9 semester per year, two classes, so I teach two classes.
10 Q Right. I'm just wondering what -- maybe I
11 didn't -- my mistake.
12 What is the frequency with which you're called
13 upon to teach each of those classes during the school
year,
14 in other words, once a week, once a month?
15 A Well, it's -- one can choose between a schedule
16 that's either two classes of an hour and a half length
per
17 week. So it's twice per week, an hour and a half, or you
18 can choose three hours and meet once, and typically I
19 choose to give my class in three hours and meet once.
20 Now, that's classroom activity.
21 There's also Ph.D students and so forth that you
22 meet on an individual appointment basis.
23 Q So is it correct, then, that you spend
24 approximately six hours a week between the MBA and Ph.D
25 students during the time school is in session, teaching?
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1 MS. BROWDY: Objection. Mischaracterizes his
2 testimony.
3 MR. GOLDSTEIN: I'm sorry, that's the way I
4 understood it.
5 THE WITNESS: If you're talking about the
6 in-the-classroom time, yes, it's two three-hour classes,
7 but there's quite a bit of time outside the classroom.
8 BY MR. GOLDSTEIN:
9 Q I didn't mean to in any way take that away. I
10 only meant the classroom time.
11 So forgive me. So that was six hours basically?
12 I mean do I understand correctly that each of the
classes
13 that you teach should consume approximately three hours
per
14 week on average during the time they're in session when
15 you're teaching?
16 A If you look simply at in-the-classroom time,
17 there's obviously preparation and there's also --
18 Q Right.
19 A -- meeting students outside of class.
20 Q We're going to get into that. But I just mean
21 the time that you actually have to be present in the
class
22 is three hours for each class per week; right?
23 A Correct.
24 Q Okay. And then how much additional time would
25 you estimate that you spend preparing for, meeting with
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29
1 students? I just want to know what part of your life the
2 professorial pursuits entail.
3 MS. BROWDY: Objection to the form of the
4 question.
5 But you can answer if you can.
6 THE WITNESS: Well, the professorial pursuits are
7 more than teaching, but if you're looking just at the
8 teaching component, in addition to the time spent in the
9 classroom, I spend a fair amount of one-on-one time with
--
10 particularly with doctoral students, but also with MBA
11 students, and I spend a reasonable amount of preparation

12 time, but quite frankly my preparation time is normally
13 closely connected to my research time.
14 In other words, what I teach is close to my
15 research, and if I know I'm going to teach a particular
16 subject, it will feed back, in effect, to my research
17 agenda significantly.

18 BY MR. GOLDSTEIN:

19 Q Okay. Maybe another way to get at this would be
20 excluding any expert witness or LACG materials, or
pursuits

21 that you undertake, how many hours would you estimate
per

22 week you spend in connection with activities at U.C.

23 Berkeley?

24 MS. BROWDY: Objection to the form.

25 You can answer if you can.

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1 THE WITNESS: Now, when you say "activities at

2 U.C. Berkeley," now, when I do research, I could be
sitting

3 at home. Presumably you're asking me about things that

4 relate to the mission and charter of the university which

5 would include my research, which would include my

6 programmatic activities. Would that be a fair reading?

7 BY MR. GOLDSTEIN:

8 Q How ever you want to answer, that's fine.

9 A Well, in that broader context, probably

10 throughout the year I would average 30 to 40 hours. And

11 that would include -- despite the fact that in the
summer

12 I'm not formally, if you will, on payroll, but a big
chunk

13 of my time goes into research, and if you look at my CV,

14 you'll notice over 150 publications, and a big chunk of
my

15 time goes into programmatic activities, for instance,
these

16 two very significant senders that I manage in my
institute,

17 one is The Efficiency Center on information technology,
the

18 other is the Lester Center on Entrepreneurship.

19 I've also got the initiative, I've got

20 initiatives outside of the United States, and that's
where

21 a good deal of my effort goes.

22 Q Okay. What percentage of time of your day do

23 you think is spent -- or let's say of a year. I want to

24 frame it in terms of a year.

25 What percentage of your time is spent in

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1 activities connected with U.C. Berkeley as opposed to
your

2 activities with expert pursuits as -- either in LACG or

3 other matters of that nature?

4 MS. BROWDY: Object to the form.

5 But you can answer if you can.

6 THE WITNESS: Can I have that one read back.

7 BY MR. GOLDSTEIN:

8 Q I can rephrase it, make it easier for you.

9 Can you quantify for me of the two -- and I'm

10 drawing conclusions of two major categories here. If
there
11 are others, you let me know, please.
12 On the one hand, we've talked about your
13 professorial pursuits, and the other we've talked about
14 briefly, you were testifying as an expert witness and
your
15 involvement with LACG.
16 Other than those two categories, are there any
17 other categories of time that take up a large chunk of
your
18 time that we haven't talked about already?
19 A Well, obviously there's -- I'm a father and I
20 have a family. You're not referring to that. You're
21 referring to professional time.
22 Q Actually I'd like to know that too, so that's
23 fine. Okay. I won't ask you to estimate that, but -- in
24 terms of time, but what about your other gainful
25 employment?

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1 MS. BROWDY: I'm going to be --
2 BY MR. GOLDSTEIN:
3 Q Is there any other gainful employment, any other
4 categories that we should be considering in terms of how
5 you divide your time?
6 MS. BROWDY: Again, I'm going to object to the
7 form of the question, but you can answer it if you can.
8 THE WITNESS: You're only focusing on gainful
9 employment. There's a lot of things I do -- there's a
10 number of societies, for instance, that I'm involved
with
11 where it's not gainful employment.
12 BY MR. GOLDSTEIN:
13 Q Okay. Let's make a category of not gainful
14 employment. Anything else other than those societies,
15 U.C. Berkeley and LACG work?
16 A I have a number of boards of directors where I'm
17 unpaid and so I'm in an advisory role, but I'm not being
18 paid to do that work.
19 Q Other than the boards and the directorships, any
20 other things that you pursue from a gainful perspective?
21 A I'm an investor and so I have invested in various
22 things over time.
23 Q Actively or passively?
24 A Both.
25 Q How much did you make last year from U.C.

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1 Berkeley?
2 MS. BROWDY: Actually let me interject for a
3 second. I don't know if we have any version of a
4 confidentiality order. Is there anything we would need to
5 make confidential?
6 THE WITNESS: No, I don't think that's a
7 confidentiality issue.
8 You asked me for the gross amount of my
9 compensation from the University of California, Berkeley?
10 BY MR. GOLDMAN:
11 Q Right.
12 A Roughly? It's about \$65,000.
13 Q And how much have you made in connection with
14 your rendering of services through LACG?

15 MS. BROWDY: Objection to the form of the
16 question. It's overbroad.
17 MR. GOLDSTEIN: I'll rephrase. Thank you.
18 Q What about as an expert witness, how much money
19 have you made last year, or did you make last year?
20 A I don't have that number in my mind.
21 Q Okay. Can you approximate it?
22 A Several hundred thousand dollars.
23 Q And what was your total income last year?
24 A I'm not sure I'm obligated to provide that.
25 Q I think you are. Because one of the concerns we
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1 have is to the extent to which you derive a significant
2 amount of money from testifying as an expert, we'd like
to
3 know what percentage of your total income that comprises,
4 and therefore we'd have to know what the total is.
5 MS. BROWDY: Well, this may -- if the witness has
6 a problem, it may be an issue you have to raise with the
7 Court. I mean he certainly has provided his bills for
this
8 case. You know his hourly rate. You can find out how
9 much time he spent, but, again, if -- I'm not going to
10 instruct the witness not to answer, but if we get into
11 financial issues and there's questions or concerns about
12 it, I'm not going to instruct him to answer either. I'll
13 let him make his judgment, and if you have to raise that
14 with the Court, we can.
15 MR. GOLDSTEIN: Sure.
16 THE WITNESS: Let me first of all say that when I
17 gave you a number for LACG, that was not just expert
18 services in the context of litigation.
19 As I explained to you earlier, I don't only work
20 as an expert witness when I do consulting, I do
consulting
21 of a managerial kind as well, particularly around
22 intellectual property issues.
23 I think I can answer your question. Hopefully it
24 will be helpful to you by saying that the percentage of
my
25 incumbents associated with expert fees in the context of
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1 litigation is certainly less than half of my income,
2 probably somewhere between 20 and 30 percent. But that's
3 an estimate.
4 BY MR. GOLDSTEIN:
5 Q How many trusts have you formed personally?
6 A Have I formed personally?
7 Q Yes.
8 A I haven't formed any trusts. I mean I don't
9 have the legal skills to form a trust.
10 Q By that I didn't mean mechanically.
11 Are you a signatory under any trusts that have
12 been formed in your name?
13 A In my name?
14 Q Yes.
15 A What does "in my name" mean?
16 Q Well --
17 A Where I'm the trustee?
18 Q We can fence all day long.
19 A I'm trying to understand the question. Because

20 if you ask me if I'm a trustee or --
21 Q Yes, that's a good question.
22 A I think there are a couple.
23 Q Okay. What are they called?
24 A I don't know for sure, but there is a charitable
25 trust -- well, there are two charitable trusts where I
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1 believe I'm a trustee or co-trustee.
2 Q And what are they called?
3 A I don't know for sure. One I believe is a
4 remainder trust that's been established for the
university,
5 and the other, I don't know for sure if I'm a trustee.
6 Actually there is a charitable trust that my wife and I
7 have.

8 Q Okay. Any other companies that you own an
9 interest in other than LACG?

10 A Yes.

11 Q And what are they?

12 A One called Canterbury International. There's
13 another one called Alkera. There's another one called
14 Optimal Water.

15 Q Can I ask you to spell it for the reporter?

16 A A-L-K-E-R-A.

17 Q And the water one was what?

18 A Optimal Water.

19 Q Okay. Any others?

20 A Well, I'm a minority player in -- with the
21 exception of Canterbury, I'm a minority player. There
are

22 other small companies where I have invested small
amounts

23 of money. Or have been involved in assisting companies
24 getting started.

25 Q Is five and a half million dollars a small amount

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1 of money, in your opinion, for you to have invested?

2 MS. BROWDY: Objection to the form of the
3 question.

4 THE WITNESS: No.

5 BY MR. GOLDSTEIN:

6 Q Okay. To your knowledge have you ever invested
7 \$5.5 million in any venture?

8 A Yes.

9 Q Okay. And what's the name of that company?

10 A Well, the one that comes to mind is Canterbury.

11 Q Okay. Where is that located?

12 A Well, it's a global company. Its headquarters
13 are in New Zealand.

14 Q And what does Canterbury do?

15 A Makes -- designs and makes sports apparel.

16 Q And how much do you make from that enterprise on
17 a yearly basis?

18 A Zero.

19 Q Do you own the company?

20 A No.

21 Q Okay. What percentage of the company do you
22 own?

23 A I don't know for sure.

24 Q Okay. Who are the other owners of Canterbury?

25 A There's quite a number.

1 Q What percentage do you own?

2 A Pardon me?

3 Q Do you know approximately what percentage you own
4 of the business?

5 A At present I believe I'm a majority shareholder,
6 but I'm not entirely sure because there's some
convertible

7 notes that certainly when converted will change the
equity

8 structure.

9 Q How are you compensated for your participation in
10 that business?

11 A Well, I'm not a paid -- I'm not paid -- I'm not
12 paid anything for my involvement. It's an investment.

13 Q When did you make your investment into
14 Canterbury?

15 A Three years ago.

16 Q And --

17 A Thereabouts. Maybe three and a half, something
18 like that.

19 Q Was someone else operating it before you made
20 your investment?

21 A Yes.

22 Q And who was that other person?

23 A I'm not sure it was a person. But it was a
24 company known as LWR, and it was a publicly traded
company

25 at the time.

1 Q And so you acquired Canterbury?

2 A Together with a group of investors, we took a
3 minority position in Canterbury initially, and that was
4 eventually transformed into a majority position.

5 Q What was the initial investment that was made
6 into LWR between you and your group of minority
investors?

7 How much was originally put in to LWR to acquire
8 Canterbury?

9 A I don't remember precisely, but I think it was
10 about five million U.S.

11 Q And how much of that was yours?

12 A I don't know precisely.

13 Q In order to convert the minority position to its
14 present majority position that you now control, how much
15 money was put into the business?

16 A I don't know for sure.

17 Q Well, approximately.

18 A It was several -- there was additional cash put
19 in, but I think the consideration was -- a good chunk of
20 the consideration was a note.

21 Q Did you list Canterbury on your CV?

22 A I think if you look at my CV, it's one of the
23 boards.

24 MR. GOLDSTEIN: Why don't we have this marked as
25 Exhibit 4, which is your vitae, and maybe you can show
me

1 where it's listed, please.

2 (Plaintiff's Exhibit 4 was marked

3 for identification by the Court Reporter
4 and a copy is attached hereto.)
5 THE WITNESS: On page 4, business affiliations.
6 It says chairman, board of directors, Canterbury
7 International. And then deputy chairman, board of
8 directors, Canterbury International.
9 BY MR. GOLDSTEIN:
10 Q Okay. Thank you.
11 Is Exhibit 4, your vitae, true and correct at the
12 present time?
13 A Um, yes. It's a document that gets updated
14 particularly as new publications come along. My
assistant
15 takes care of that. I believe you have one that's dated
in
16 May; is that correct?
17 Q Yes. It says May, 2003.
18 A Yes.
19 Q So to the best of your knowledge, everything in
20 here is true and correct; right?
21 A Yes. Having said that, I mean there may be some
22 minor issues around when a publication is going to
appear,
23 and sometimes my assistant will estimate it and get it
24 wrong by a year or something like that, but other than,
you
25 know, issues of that kind, it is correct.
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1 Q Okay. And it's also complete; is that right? To
2 the best of your knowledge, this vitae accurately
describes
3 the business affiliations you've had?
4 A Well, it does not purport to be complete. If
5 I -- for instance, I do not have on there all of my
working
6 papers, and my policy is to put on my CV only
publications.
7 Some people put working papers on their CV,
8 particularly if they don't have much in the way of
9 publications. I don't.
10 And there is a -- you know, with business
11 affiliations typically what I have listed there are
things
12 where I'm on the board of directors. If I'm involved as
13 an investor, but I'm not on the board of directors, or
if
14 I'm involved as an advisor, then I don't list such
things
15 in the category called business affiliations.
16 Q All right. Is there anything that comes to mind
17 that you have not listed on here purposely?
18 A Well, I've not purposely put on my working
19 papers. I mean --
20 Q When you say "working papers," you mean the
21 research papers that are in progress that have not yet
been
22 published, is that what you mean?
23 A Yes. And there's one or two that probably never
24 will be published.
25 Q Okay. Fine.
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1 But -- and if I understood you correctly, that's
2 a very well accepted practice, not to list something
before
3 it's been published; right?
4 A Some people follow that practice. Others don't.
5 Q Well, that's a practice and you're comfortable
6 with that; right?
7 A Yes.
8 Q Okay. Any other business affiliations or
9 activities that you've engaged in that have not been
10 disclosed on your vitae? I'll just ask you to look at it
11 to see if you can peruse it, please, on page 4, and see
if
12 there's anything else that you want to tell us about
today.
13 A Well, I'll --
14 MS. BROWDY: I'll object to the form of that
15 question.
16 BY MR. GOLDSTEIN:
17 Q Anything that you find that you did not list on
18 Exhibit 4?
19 MS. BROWDY: Same objection.
20 THE WITNESS: Well, you know, I don't list my
21 real estate portfolio, for instance, as you were asking
me
22 about my residences before. I don't list my real estate.
23 It's not what is normally put on someone's CV, or I've
24 never seen someone list their real estate on a CV.
25 BY MR. GOLDSTEIN:
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1 Q Okay. Anything else that you did not list that
2 you're aware of?
3 MS. BROWDY: Again, objection to the form of the
4 question.
5 BY MR. GOLDSTEIN:
6 Q Why don't we do it this way: Why don't you
7 review it and tell me if your -- you believe that it
8 accurately reflects the business affiliations that you
9 presently have as of May, 2003.
10 MS. BROWDY: Objection to the form of the
11 question.
12 You can answer if you can.
13 THE WITNESS: Well, business affiliations is one
14 category. What I've listed is where I have some role in
15 the governance. I've not listed things where I'm an
16 investor, but if I have a role in governance, then I've
17 listed it. That's the criteria that I've used.
18 I'm trying to think if there are other entities
19 where I have a role in governance that I haven't listed,
20 and I can't think of any as I sit here right now.
21 BY MR. GOLDSTEIN:
22 Q When you made reference earlier to the U.S. case,
23 that's the case that's been brought against the tobacco
24 industry entitled United States versus Philip Morris; is
25 that correct?

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1 A Correct.
2 Q And you are a witness for the tobacco industry
3 against the United States of America as plaintiff;
correct?
4 A I am a witness for -- I don't know if it's the

5 industry. I believe I was retained by Reynolds. It
6 could have been on behalf of both Reynolds and Philip
7 Morris. I'm not entirely sure.
8 MS. BROWDY: Whenever is a good time for a break.
9 MR. GOLDSTEIN: You want to take one now, that's
10 fine.
11 MS. BROWDY: Okay.
12 (Off record at 10:28 until 10:42.)
13 BY MR. GOLDSTEIN:
14 Q Can you tell me the matters in which you have
15 been retained either as a consultant -- first those in
16 which you have been retained as an expert witness on
17 of anybody in the tobacco industry.
18 MS. BROWDY: Objection to the form.
19 You can answer if you can.
20 THE WITNESS: I'm sorry, where I have been
21 retained as an expert witness?
22 BY MR. GOLDSTEIN:
23 Q Yes.
24 A I always get the case names mixed up.
25 MS. BROWDY: Actually can we just clarify? I'm
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1 not entirely sure of the rules in California. I assume
2 you mean as a testifying witness.
3 BY MR. GOLDSTEIN:
4 Q There's probably three levels, so why don't we
5 make it easy first and ask in what matters have you
6 testified as an expert in court?
7 MS. BROWDY: Objection. You mean in tobacco or
8 in anything?
9 MR. GOLDSTEIN: I'm sorry. Could I ask --
10 MS. BROWDY: This could be all day.
11 BY MR. GOLDSTEIN:
12 Q Let's first -- good point.
13 In how many matters have you actually testified
14 in court as a witness, as an expert witness, in any
15 matter?
16 A Probably a dozen to 20.
17 Q Over what period of time?
18 A The first time I ever testified is in the late
19 70's.
20 Q What kind of case?
21 A Antitrust case.
22 Q Involving who?
23 A Kaiser Steel and California Steel & Tube.
24 Q When was the next time you testified as an
25 expert?
26 A In court?

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1 Q Right. And I don't need to have it in exact
2 chronological order. Why don't you tell me as best you
3 can recall sitting here the other matters you recall
4 testifying as an expert in court.
5 A Well, I can give you a stream of consciousness on
6 this, but I couldn't claim unless I went back to be
7 complete. I'm sure I'll miss some.
8 Q To the best of your recollection.
9 A As I sit here right now?
10 Q Yes.
11 A Okay. I testified on the Unocal matter, which

12 is a patent case. For Unocal was both for plaintiff and
13 defendant.

14 I testified in the Long Beach case.

15 Q On that matter, the Unocal case, did you testify
16 for them as a plaintiff or defendant?

17 A I think initially as a plaintiff.

18 Q Okay. And then they were sued in that case as
19 well?

20 A Well, it was complicated because they were sued
21 for declaratory relief under a patent. But initially --
22 well, actually, no. I think they were a defendant.
23 They were the owner of the intellectual property,
24 but they got sued for declaratory relief before they
25 actually had the opportunity to sue for infringement. So
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1 the best way to represent that, since I don't know
whether

2 Unocal was plaintiff or defendant or both, is to simply
say

3 it was for the owner of the intellectual property, and on
4 the other side were the major petroleum companies.

5 Q Okay.

6 A I testified in the Long Beach case, which was the
7 antitrust case, and I testified on a number of cases that
8 came to be known as the infant formula cases.

9 Q Who did you testify for in those matters?

10 A I was retained by Abbott.

11 Q And they manufactured which infant formula?

12 A Oh, goodness. The company, the subsidiary was
13 Ross. It is the major brand, was the major brand of -- I
14 quite frankly forget as I sit here right now.

15 Q Were these all in the United States, by the way,
16 all these cases?

17 A No. I've testified outside the United States
18 too.

19 Q Okay. And in giving me your response, why don't
20 you give -- have -- any of those that you've mentioned,
21 these are all United States cases so far?

22 A Yes.

23 Q Let's keep going.

24 A I testified on a patent case for Silicon
25 Graphics.

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1 I testified for Chevron, also dealer issues.

2 I testified for Sangyong Cement on some
3 intellectual property issues.

4 MS. BROWDY: Do you have the spelling of that?

5 THE WITNESS: S-A-N-G-Y-O-N-G.

6 I mentioned infant formula cases. I think there
7 was two or three of those, including one when Eslay was
the

8 plaintiff and Abbott was the defendant.

9 Another one was an FTC matter against Abbott.

10 I know there are others. They just don't come
11 to mind right now.

12 BY MR. GOLDSTEIN:

13 Q All right. What about tobacco cases?

14 A None. I have not testified in court on a
15 tobacco matter.

16 Q Okay. Have you given your deposition in any
17 tobacco matters?

18 A Yes.

19 Q In what cases?

20 A The U.S. case, Rivera.

21 Q How do you spell Rivera?

22 A It's R-I-V-E-R-A.

23 Q Where was that?

24 A I think that one was in Sacramento, but I'm

25 not --

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1 Q Is that the one this last year?

2 A I believe so.

3 Q Okay.

4 A There was another one in San Francisco two or

5 three years ago. I've forgotten the name of the

6 plaintiff.

7 Q Is that Whiteley?

8 A Yes.

9 Q Okay. Any others?

10 A There was what I think of as the asbestos cases

11 where the asbestos companies were suing the tobacco

12 companies.

13 Q Which ones?

14 A I quite frankly don't recall.

15 Q When was that?

16 A Three or four years ago.

17 Q And who did you testify for on behalf of that

18 case?

19 A It was either Philip Morris or Reynolds. I

20 think it was Philip Morris.

21 Q Okay. What were the issues in that case?

22 A Basically antitrust issues. Same, conspiracy

23 charges that -- well, somewhat differently, but similar

24 conspiracy charges to what has been put forth in this

case.

25 Q Could you define for me what your understanding

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1 is of antitrust issues with respect to this case, for

2 example? I know you used that when we first started here,

3 and I just want to make sure we're on the same page or

that

4 I understand what you mean by that.

5 MS. BROWDY: I'm going to object to the form.

6 But you can answer if you can.

7 THE WITNESS: Well, I understand this is not an

8 antitrust case, but in other cases, the same behavior has

9 been challenged under the antitrust rules with an

argument

10 that the conspiracies at issue were designed to restrict

11 competition.

12 BY MR. GOLDSTEIN:

13 Q Is that a component of the U.S. case?

14 A Yes.

15 Q Now, any other cases that you've been called upon

16 to serve as a consultant other than the ones that you've

17 mentioned here?

18 MS. BROWDY: Objection to the form.

19 You can answer if you can. And also presumably

20 we're talking about cases where you would have been

21 designated as a testifying expert. I don't know if

you're

22 entitled to inquire into areas where he was only a

23 consulting -- first of all, I don't even know if there
were

24 things where he was a consulting expert.

25 MR. GOLDSTEIN: Well, to the extent he receives
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1 income from one of the parties that's involved here, I
2 think it's fair game, but, you know, it may not be
3 admissible.

4 Discovery is fairly broad, but I'm not trying to
5 invade any privacy or privilege issues here. I'm just
6 wanting to ask.

7 Q In your answer that you just gave me, did you
8 exclude some other companies, other tobacco companies,
for

9 whom you have worked in the past?

10 A In the past the only two I've worked for are
11 Philip Morris and R. J. Reynolds. On this case I
12 understand I'm being retained for American and Philip
13 Morris.

14 Q When did you give your deposition in the U.S.
15 case?

16 A Last year.

17 Q When, do you know?

18 A I believe it was in the summer.

19 Q Okay. And where was it taken?

20 A In San Francisco.

21 Q And who took your deposition, do you know?

22 A The government attorney's first name was Rene.

23 Rene Booker, I believe. B-O-O-K-E-R.

24 Q And how long did that go for?

25 A Um, it was adjourned. In total I think it went
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1 for five days, something like that.

2 Q And how much did you bill for your testimony in
3 that case, if you recall?

4 A I don't recall.

5 Q Did you review your deposition in that case in
6 preparation of you giving testimony here today?

7 A No.

8 Q Do you have a recollection of any specific
9 documents that you recall to prepare yourself for today's
10 deposition?

11 A A few.

12 Q What were they, please?

13 A One was Thomas Coon's book on the -- it's called
14 The Logic of Scientific Discovery, something like that.

15 There was an article from I believe a Minnesota
16 Medical Journal. Let me take a look. Perhaps I can be
17 more specific.

18 Q Where did you conduct this review, by the way, of
19 documents?

20 A In three places. One was my home, another one
21 was at LACG. The fourth one was --

22 Q Third one.

23 A Third one was here at Kirkland offices in
24 Los Angeles. And actually there was a fourth one, which
25 was my hotel room.

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1 Q Okay. When did you come down for this
2 deposition?

3 A Sunday evening.
4 Q And with whom did you meet to prepare for this
5 deposition?
6 A Ms. Browdy, and there was another associate, Mark
7 somebody. I have to apologize to him for forgetting his
8 name. And with Dr. Ingberman.
9 Q Did he come down too?
10 A Yes.
11 Q Okay. And where is he today?
12 A I think he's gone back home.
13 Q Okay. What was the discussion that took place
14 or -- sorry. Over what period of time or how much time
15 did you spend with Ms. Browdy in preparation for your
16 deposition testimony today?
17 A Six to eight hours, I would guess.
18 Q And when was that done?
19 A Part of it was yesterday, and then another part
20 of it was on the weekend in northern California.
21 Q What was discussed in your meeting with
22 Ms. Browdy?
23 A Basically my opinions in this case, and more
24 importantly the foundations for those opinions.
25 Q Okay. Was there a statement such as, "You're
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1 likely to be asked questions about the Plaza Hotel
2 meeting"? Was that or something similar discussed?
3 A No.
4 Q Okay. Were you ever supplied with statements by
5 anyone to the effect that, "You're likely to be asked
6 questions about the following," and then they filled in
the
7 blanks or told -- sorry. Let me rephrase.
8 Were you ever told what you were likely to be
9 asked questions about in this deposition during your
10 meetings prior to this deposition?
11 A In a general sense.
12 Q Okay. Why don't you tell me as specifically as
13 you can recall what was discussed in those meetings.
14 A A couple of things. One was I probably wouldn't
15 get any questions on substance, and that the questions
16 would be very oblique, probably unrelated to the core
17 issues in the case, probably unrelated to the core
issues
18 in the case from an economic point of view. That I
should
19 expect questions on anything.
20 But having said that, then of course I should
21 also prepare myself on the economic questions.
22 Q Anything else that you can recall that was
23 discussed?
24 A Well, I can tell you what I discussed. I took
25 the affirmative role of outlining my opinions and
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1 essentially ended up preparing the one page that you
have,
2 so we discussed those issues.
3 Q Where did you prepare that, by the way?
4 A Here in Los Angeles.
5 Q Whereabouts?
6 A In the Kirkland office.
7 Q Did you use one of their computers?

8 A No.
9 Q You had your own computer?
10 A No. It was done on Dr. Ingberman's laptop.
11 Q Okay. Did he do the typing?
12 A Yes.
13 Q And when this was compiled, was it a joint effort
14 on the part of someone else other than yourself?
15 A Joint.
16 Q And I take it some of this input is yours;
17 correct?
18 A The document is mine and Ingberman -- or
19 Dr. Ingberman would make a few editorial changes.
20 Q Any attorneys give you --
21 MS. BROWDY: Excuse me, I don't know that he was
22 done.
23 BY MR. GOLDSTEIN:
24 Q Excuse me. Go ahead.
25 A We would make a few editorial changes and we
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1 ordered -- changed the ordering of some of the topics.
2 Q Anybody else --
3 Who else was present when that was occurring?
4 A Michelle Browdy.
5 Q Did she participate in making any changes or
6 modifications to anything that was written prior to the
7 issuance of this document in its present form?
8 A No.
9 Q What did you talk about in terms of substantive
10 core issues?
11 MS. BROWDY: Objection to the form of the
12 question.
13 But you can answer if you know what he's asking.
14 THE WITNESS: Well, basically what you have there
15 in the outline plus the issues that are covered in my
U.S.
16 report.
17 BY MR. GOLDSTEIN:
18 Q One might say that it's odd for an economics
19 professor to be talking about conspiracy issues.
20 Why do you feel it's appropriate for you to be in
21 a position to be offering expert opinion concerning the
22 allegations of an alleged conspiracy?
23 MS. BROWDY: I'm going to object to the form of
24 the question.
25 But you can answer if you can.
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1 THE WITNESS: Well, the whole question of joint
2 conduct, which is what conspiracy is, is central to
3 economics, or at least one field of economics known as
4 industrial organization, so it's a topic that's much
5 written about by economists, and in fact it's a topic
that
6 I've written on.
7 Joint behavior or joint action that is arrived at
8 collusively is, of course, a component of a cartel. And
so
9 the literature on cartels overlaps considerably with the
10 literature on conspiracy.
11 BY MR. GOLDSTEIN:
12 Q You don't have any personal firsthand knowledge
13 of anything that occurred, let's say, in December of

1953

14 because you weren't present; right?

15 MS. BROWDY: Objection to the form.

16 But you can answer if you can.

17 THE WITNESS: I do have personal knowledge of

18 certain things that happened in 1953, but none that are

19 specific to this case.

20 BY MR. GOLDSTEIN:

21 Q Okay. Well, obviously you were alive in 1953.

22 A Yes.

23 Q And as a five year old, I assume you have

24 recollections which would not interest us particularly

in

25 this case. But with respect to the offering of

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1 opinions --

2 First, is it your belief that there was no

3 conspiracy between any of the defendants in this case to

4 conceal any information from the public concerning the

5 dangers of tobacco use?

6 MS. BROWDY: Objection to the form of the

7 question.

8 Overbroad. You can answer if you can.

9 THE WITNESS: As an economist, it's my opinion

10 that I don't see any evidence in the marketplace of a

11 conspiracy.

12 I don't rule out that someone may have

13 contemplated certain joint action, but as an economist,

I'm

14 trained to look at evidence in the marketplace, and also

if

15 you have an allegation of a conspiracy that's taken

place

16 over a long period of time, economists have written

17 extensively on what it is that you need to sustain an

18 agreement that is at odds with the individual incentives

of

19 the individual parties.

20 BY MR. GOLDSTEIN:

21 Q Would it not be in the interest of the various

22 members of the tobacco industry if there were known

risks

23 of health hazards incident to the use of tobacco to

24 suppress that from the public for as long as they did?

25 MS. BROWDY: Objection to the form. Improper

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1 hypothetical.

2 But you can answer if you can.

3 THE WITNESS: Can I have it read back, please.

4 (The pending question was read

5 back by the Court Reporter as follows:

6 "Q Would it not be in the interest

7 of the various members of the tobacco

8 industry if there were known risks of

9 health hazards incident to the use of

10 tobacco to suppress that from the

11 public for as long as they did?")

12 THE WITNESS: Your question implies an outcome

13 for which I'm not sure there's evidence. But if you ask

14 about individual actions and individual incentives, they

15 have to be looked at in the context of can you suppress

16 information when you don't control the sources of that
17 information.

18 As an economist, one looks at this by saying if
19 there's an allegation that you're suppressing,
something,
20 be it informational, be it innovation, you need market
21 control to do so.

22 As an economist, I've looked at this, and clearly
23 in my view, tobacco companies, individually or jointly,
24 don't have market control. So they can't suppress
25 information because they don't control it.

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1 BY MR. GOLDSTEIN:

2 Q Why do you say they don't control it?

3 A Because there's more sources of such information.

4 There's universities, there's medical centers, there's
the

5 government. There's international organizations, there's,
6 you know, they don't control the generation of it and
they

7 don't control the transmission of it.

8 So if you don't control it, you can't suppress it
9 in the sense of suppressing what's in the marketplace for
10 information.

11 Q You're not legally trained, are you?

12 MS. BROWDY: Objection to the form of the
13 question.

14 You can answer.

15 BY MR. GOLDSTEIN:

16 Q You've undertaken no formal legal education; is
17 that right?

18 A Correct.

19 Q Okay. You're not an attorney or barrister or
20 solicitor in another country you haven't told us about;
21 right?

22 A Correct.

23 Q Did you ever attend any law school anywhere else
24 outside the United States?

25 A No.

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1 Q So the information that you have of a legal sense
2 is perhaps gained from experience in your various
pursuits

3 as an expert witness?

4 MS. BROWDY: Objection to the form of the
5 question.

6 You can answer if you can.

7 THE WITNESS: First of all, I'm an economist, not
8 a lawyer, and I'm not putting myself forward in any way
9 whatsoever as a lawyer.

10 To the extent to which I get insight into the
11 law, it comes from three different sources. One, I'm
12 active in the field of law and economics, which is the
13 intersection of law and economics, and I do get some
14 insights into the law through working in the field of
law

15 and economics. But that's kind of a back-door vista into
16 the law.

17 I do pick up some experience and understanding of
18 the law from working on complex litigation, and then
from

19 my general reading.
20 BY MR. GOLDSTEIN:
21 Q Do you consider yourself to be a pretty well-read
22 person in terms of current events?
23 MS. BROWDY: Objection to the form of the
24 question.
25 You can answer if you can.

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1 THE WITNESS: Current events have been a
2 long-standing interest of mine, but it's very hard to be
3 comprehensively well read in today's environment because
4 there's so much to read.

5 BY MR. GOLDSTEIN:

6 Q Now, I take it that the adverse parties who have
7 deposed you often try to ask you questions to discern
8 whether or not you believe there's any evidence of any
9 conspiracy that ever existed in the United States among
any
10 members of the tobacco industry including the defendants
in

11 this case. Is that a fair statement?

12 MS. BROWDY: Objection to the form. Overbroad.

13 You can answer if you can.

14 THE WITNESS: Can I have it read back, please.

15 (The pending question was read
16 back by the Court Reporter as follows:

17 "Q Now, I take it that the adverse
18 parties who have deposed you often try
19 to ask you questions to discern
20 whether or not you believe there's any
21 evidence of any conspiracy that ever
22 existed in the United States among any
23 members of the tobacco industry
24 including the defendants in this case.

25 Is that a fair statement?")

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1 THE WITNESS: Perhaps I can answer it this way:
2 There has been at least one deposition where the question
3 of conspiracy and joint action was thoroughly explored.

4 BY MR. GOLDSTEIN:

5 Q Which deposition was that?

6 A The U.S. case.

7 Q All right. And do you believe that there's any
8 evidence that anyone has put forth adverse to you that --
9 of any inferred conspiracy on their part? In other words,
10 is it your belief that the, quote, unquote, conspiracy
11 theory by the tobacco defendants to suppress known risks
is

12 without substance?

13 MS. BROWDY: Objection to the form of the
14 question.

15 But you can answer if you understand it.

16 THE WITNESS: Could I have it read back.

17 (The pending question was read
18 back by the Court Reporter as follows:

19 "Q All right. And do you believe
20 that there's any evidence that anyone
21 has put forth adverse to you that --
22 of any inferred conspiracy on their
23 part? In other words, is it your
24 belief that the, quote, unquote,

1 defendants to suppress known risks is
2 without substance?")
3 MS. BROWDY: Your question is almost as long as
4 the U.S. report. Do you want to try again?
5 BY MR. GOLDSTEIN:
6 Q Do you believe there's any evidence of any,
7 quote, unquote, conspiracy that existed between the
tobacco
8 defendants in this case?
9 MS. BROWDY: Objection to the form of the
10 question. Overbroad.
11 You can answer if you can.
12 THE WITNESS: Let me see if I can answer this
13 way: In terms of any impact on the marketplace, I mean
14 let's take the two main allegations: One, the allegation
15 that the companies conspired to suppress a safer
cigarette.
16 There's bountiful evidence that they spent a lot of time
17 and effort and money on efforts to improve cigarettes.
18 There are very, very powerful explanations
19 independent of conspiracy to explain why today there is
not
20 something which people would uniformly agree is a safer
21 cigarette available in the marketplace, government
22 regulation being one factor.

23 Similarly, with respect to suppression of
24 information on the health effects of smoking, the
25 information market is well populated with studies and

1 reports that establish that there is association between
2 smoking and cancer.
3 So if there ever was a conspiracy, there's no
4 evidence of its impact in the marketplace, and, moreover,
5 to assert a conspiracy over 50 years, you would need to
6 have an apparatus, like some type of quasi cartel
7 apparatus, to keep the conspiracy going.
8 I've not seen any evidence that any such
9 apparatus exists.

10 BY MR. GOLDSTEIN:

11 Q When you say "apparatus" --

12 MS. BROWDY: Excuse me. I just don't know if
13 you were done. Were you done?

14 THE WITNESS: Yes.

15 BY MR. GOLDSTEIN:

16 Q When you say "an apparatus," you mean like a
17 central organizational being, if you will, or some
group, a
18 control group that would make decisions that would
affect

19 the remainder or the market components?

20 MS. BROWDY: Objection to the form, but you can
21 answer if you can.

22 THE WITNESS: Some type of apparatus. There are
23 many different forms. It could be imagined, and I don't
24 have a wooden view of exactly what that apparatus might
be,

25 but to have something sustained that's against the

1 individual interest of the parties, but it only makes sense

2 if they do it jointly, you do need some apparatus to
3 monitor behavior, to discipline departures from behavior,
4 and some parties are making a greater sacrifice than the
5 other, to effectuate some type of cite payment. So you
6 need something to keep it going.

7 BY MR. GOLDSTEIN:

8 Q Are you familiar with the TIRC?

9 A Yes.

10 Q And how about the CTR?

11 A Yes.

12 Q What is your understanding of the purpose for
13 TIRC? When was it founded?

14 MS. BROWDY: Objection to the form. Overbroad.

15 But you can answer if you can.

16 THE WITNESS: I wouldn't claim to be complete,
17 but certainly one component of TIRC was to fund research
18 and to engender exploration on some of the basic
scientific

19 and public health issues around smoking and health.

20 BY MR. GOLDSTEIN:

21 Q What about CTR, do you know what CTR is?

22 MS. BROWDY: Same objection as overbroad.

23 But you can answer if you can.

24 THE WITNESS: I believe that had more of a public
25 relations angle to it.

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1 BY MR. GOLDSTEIN:

2 Q And how did you acquire the knowledge about
3 either TIRC or CTR?

4 A I've read documents with respect -- in fact, if
5 you give me the U.S. report, there's a section in there
6 where I actually discuss these organizations.

7 Q Well, I haven't read it yet. I'll try to go
8 into it, but I just want to know as you sit here today,
9 your best estimate. And you've just told me, to the
10 extent that you know, what they were formed for and what
11 the purpose was; right?

12 A Well, they were, you know, special projects as
13 well as, you know, a research funding activity that was
run

14 through the former.

15 Q What are special projects?

16 MS. BROWDY: Objection to the form.

17 Overbroad.

18 You can answer if you can.

19 THE WITNESS: I believe there were some specific
20 issues of interest to one or more of the tobacco
companies

21 that were looked at pursuant to the mandate of the
22 organization.

23 BY MR. GOLDSTEIN:

24 Q Are you aware of any information that was
25 disseminated publicly from either CTR or TIRC to the

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1 general public that they intended any of the public to
rely

2 upon?

3 MS. BROWDY: Objection to the form of the

4 question as vague and ambiguous and overbroad.

5 But you can answer if you can.
6 THE WITNESS: I think there were various things
7 put in the public domain from time to time.
8 BY MR. GOLDSTEIN:
9 Q Did you conduct a study of that yourself, of
10 their various functions or reports -- or the reports
that
11 they put out?
12 MS. BROWDY: Objection to the form.
13 But you can answer if you can.
14 THE WITNESS: I think I've seen some of the
15 things that they produced, and I believe other witnesses
16 have discussed the nature and form of what they were
17 producing.
18 BY MR. GOLDSTEIN:
19 Q Did either TIRC or CTR function as a group that
20 was funded by the tobacco industry or its members?
21 MS. BROWDY: Objection to the form of the
22 question.
23 You can answer if you can.
24 THE WITNESS: If you're asking me whether or not
25 they had joint funding or they were funded by more than
one

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1 company, yes, I believe they were.
2 BY MR. GOLDSTEIN:
3 Q And to your knowledge, did TIRC operate as a
4 vehicle that was a cooperative effort from all of its
5 members?
6 MS. BROWDY: Objection to the form.
7 You can answer if you can.
8 THE WITNESS: Well, I believe there was joint
9 funding. I think the allegation of funds was done
10 substantially pursuant to an external advisory board of
11 some significant names in science and medicine.
12 BY MR. GOLDSTEIN:
13 Q Are you aware of any documents generated by
14 anybody within TIRC or CTR indicating that it was to
have
15 been undertaken for the purposes of trying to inform the
16 public of the particular agendas that the tobacco
industry
17 had?
18 MS. BROWDY: I object to the form of the
19 question.
20 I'll let you answer if you can.
21 THE WITNESS: I'm not sure I understand the
22 question.
23 BY MR. GOLDSTEIN:
24 Q Okay. Let me rephrase.

25 First of all, how long, to your knowledge, did
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1 TIRC and CTR exist, during what period of time?
2 A I believe through the 50's and 60's and maybe
3 longer.
4 Q If I told you that I sat in your very seat last
5 week and had a man tell me it still exists today,
however,
6 it's winding down, that man who gave his deposition in
this
7 room last week testified that he's still on payroll with

8 CTR, would that surprise you, that it's still in
existence
9 today?
10 A No. I mean it's not very active, to my
11 knowledge, but whether it still exists legally and has a
12 person to mind documents or do whatever, I just don't
know.
13 Q Okay. You said that you thought that CTR
14 operated more as a public relations vehicle, if you
will;
15 is that right?
16 MS. BROWDY: I --
17 BY MR. GOLDSTEIN:
18 Q I'm not trying to misquote you. You did say
19 words to that effect. Is that not right, or did I
20 misunderstand you?
21 MS. BROWDY: If I can clarify, did you start
22 out -- I don't know if you're talking about the Tobacco
23 Institute or CTR.
24 MR. GOLDSTEIN: No. CTR. CTR.
25 THE WITNESS: I believe it did. That was one
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1 component of its activities.
2 BY MR. GOLDSTEIN:
3 Q Now, as I understood your testimony, when I asked
4 you about TIRC and CTR, you drew a distinction that one
of
5 them you felt was more involved with public relations
than
6 the other?
7 A Yes. Can I look at my U.S. report? I just
8 want to refresh my memory on some of these points.
9 Q Okay.

10 A Thanks.
11 MS. BROWDY: Want to take a short break while
12 he's reviewing the document?
13 MR. GOLDSTEIN: Sure.
14 (Brief recess.)
15 BY MR. GOLDSTEIN:
16 Q Dr. Teece, when you assembled --
17 A Can I just clarify? I think there's a question
18 pending.
19 Q Oh, go ahead. I'm sorry.
20 A On page 55 of my U.S. report, I do discuss TIRC
21 and CTR, and in fact I had gotten confused in my earlier
22 discussions.
23 It was the tobacco industry which had more of a
24 PR function. TIRC became CTR, and its primary focus was
25 funding research.

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1 Q Okay. Is it not your belief that -- strike
2 that. I'll rephrase.
3 You're aware of a number of verdicts that have
4 recently been rendered against Philip Morris as an
example,
5 are you not?
6 A When you say "aware," I'm aware in the sense I've
7 read in the newspaper that there have been some --
8 individual smoker or matters and I say, for instance, the
9 Bullock case.
10 Q Okay.

11 MS. BROWDY: He can tell you the date of the
12 verdict on it we saw last time.
13 BY MR. GOLDSTEIN:
14 Q What's your understanding of the Bullock case,
15 from what you read?
16 A I really don't have any understanding of it other
17 than it was a very significant judgment entered in favor
18 of
19 the plaintiff.
20 Q Do you know any of the findings that were
21 rendered in that case?
22 A No.
23 MS. BROWDY: Objection to the form.
24 You can answer if you can.
25 BY MR. GOLDSTEIN:
26 Q Do you know whether there was a finding, for
27 David Teece Depo Reller v PM May, 2003 Page 73 of 149
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1 example, of fraud against Philip Morris?
2 A I don't know. I haven't reviewed the findings.
3 Q When you read your article, the articles that you
4 said generally you're familiar with having read, is it
5 just
6 with respect to the fact that there was a large verdict?
7 Is that the thing that stuck in your mind?
8 A Basically I think I just saw the headline.
9 Q No other familiarity with the Bullock case at
10 all?
11 A No.
12 Q Okay. With respect to -- let me ask you about
13 the Reller case -- I mean not the Reller case, the
14 Bowkin
15 case. I misspoke. Bowkin.
16 Have you ever heard about the Bowkin case,
17 Richard Bowkin?
18 A The name is familiar, but I, once again, don't
19 know any of the details.
20 Q I'll represent to you that was a case that
21 Mr. Puize handled that resulted in a \$3 billion verdict.
22 It was reduced to \$100 million in June of 2001.
23 Does that refresh your recollection at all?
24 A I'm not sure I had a recollection. I just knew
25 it was one of the individual smoking cases.
26 Q Okay. Was it of interest to you that that
27 was -- that these, rather, Bullock and Bowkin, were
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1 verdicts that were rendered against a company that had
2 hired you to render expert testimony, in other words, to
3 pay particular attention to the fact that, "Gee, that's
4 Philip Morris, I work for them"?
5 MS. BROWDY: Objection to the form.
6 You can answer if you can.
7 THE WITNESS: No, not really.
8 BY MR. GOLDSTEIN:
9 Q Okay. I'll ask you to assume for a moment that
10 the judges and the juries in both cases found that there
11 was evidence of fraud that was proven resulting in a
12 verdict -- when I say "fraud," it was at least with
13 respect
14 to the concealment of known risks of tobacco. In other
15 words, similar to the allegations I believe that are in
16 this case.

16 Does that come as something that you're not aware
17 of?
18 MS. BROWDY: Objection.
19 BY MR. GOLDSTEIN:
20 Q You're not aware of -- I'll rephrase.
21 You're not aware of the fact that there was a
22 finding of fraud made against Philip Morris in either
case;
23 is that right?
24 A As I said, I really don't know the specifics of
25 the judgments.
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1 Q Okay. Or of the case; right?
2 A Correct.
3 Q When you were hired by the various tobacco
4 companies that you've rendered services for, do you
recall
5 any occasion when they or their counsel have ever
provided
6 you with materials to review?
7 A Pursuant to my request, yes, they have provided
8 me with materials to review.
9 Q And did you do that verbally or in writing?
10 A Verbally.
11 Q And who did you make the request of in this case?
12 A Well, my requests would typically be conveyed
13 through Dr. Ingberman, and I believe they were to
Michelle
14 Browdy.
15 Q And when was it that you recall the first such
16 request for documentation was made?
17 A Probably six months or so ago.
18 Q Did you have a personal conversation with
19 Ms. Browdy on the telephone concerning our requesting
20 materials be sent?
21 A No.
22 Q Who was the first person that contacted you
23 relative to your retention in this case as an expert?
24 A It would have been Michelle Browdy.
25 Q And that was about six months ago?
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1 A Approximately.
2 Q Did you know Michelle before you had that
3 conversation with her?
4 A No.
5 Q All right. And what was said and by whom during
6 that conversation?
7 A I don't recall the specifics. It was a fairly
8 brief meeting, but I think she was aware of my report in
9 the U.S. case, recognized that there was some similar
10 issues in this matter, and asked me if I would be
11 interested in testifying on similar issues in this case
as
12 I had testified to in the U.S. case.
13 Q Was that in person or by phone?
14 A In person.
15 Q And where did that meeting take place?
16 A In Emoryville.
17 Q She came to your office?
18 A Yes.
19 Q Had you had any prior conversation or

20 communication with her prior to the time she showed up
at

21 your office?

22 A No.

23 Q And how long did the first meeting last with her?

24 A I don't recall. I think it was fairly short.

25 An hour or so.

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1 Q And what was discussed during that meeting that

2 you haven't already told us about?

3 A Well, that it was Kirkland this time that had

4 been retained, that her client was American Tobacco,
that,

5 you know, there would be an opportunity to develop
economic

6 issues that she knew I had some background in and that --

7 she asked if I had sufficient time to work on this over
the

8 next six months and would be willing to testify at trial
if

9 asked.

10 Q All right. When was the discussion about

11 documents had? When did you first have a discussion with
12 her?

13 A Well, I don't recall -- I'm sure, although I

14 don't recall specifically, you know, I believe in that

15 conversation that Dr. Ingberman and I conveyed that, you

16 know, we would expect to be receiving any Reller-

specific

17 documents, and then I basically handed that process over
to

18 Dr. Ingberman.

19 Q And so he was the one that made the decision as

20 to what to ask for specifically?

21 A I wouldn't put it quite that way. I mean he

22 knows the issues that I'm interested in, and it's his
job

23 to make sure that I have relevant documents relating to

24 that area, and also if there are other documents that he

25 thinks may be useful to me, it's part of his

responsibility

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1 to help find those in the records of his case.

2 Given that the record is large, I'm -- I need his

3 assistance to identify the documents that are most

4 important.

5 Q Do you maintain a file of documents on this case?

6 A LACG does, yes.

7 Q And are they in the offices in Regal?

8 A Yes.

9 Q And how voluminous are the files maintained on

10 this case?

11 A Well, some of them are electronic, but the

12 physical hard copy ones that were pulled out to help me

13 review for this deposition consisted of a line of black

14 binders that was 10 to 15 feet long that were stacked up
in

15 the conference room by Dr. Ingberman.

16 Q Did you ever tell him that you wanted to review

17 opening or closing arguments that had been made in other

18 cases against the same defendants?

19 A I don't recall that specific request.
20 Q Okay. Have you ever reviewed opening or closing
21 arguments from other cases, other tobacco cases?
22 A Yes.
23 Q And in what cases? What did you review?
24 A When did I do that?
25 Q What did you review?
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1 A Oh. Well, it's not infrequent if it's a case
2 that I'm going to testify on that I will ask somebody to
3 get those opening arguments. I don't do it every time,
4 but it's, you know, reasonably common practice. The last
5 one that I remember is the Rumbas case.

6 Q Which one?

7 A Rumbas. It's not a tobacco case. It's a
8 non-tobacco case.

9 Q Why would seeing an opening or closing argument
10 in a similar case be of assistance to you in rendering
11 testimony?

12 A First of all, I didn't testify that it would be
13 of assistance. What I testified to --

14 Q No, I'm saying why would it be. Why would that
15 be something you would want to review?

16 MS. BROWDY: Objection to the form.

17 You can answer if you can.

18 THE WITNESS: First of all, let my own testimony
19 be clear that what I typically review is the opening and
20 closing arguments -- excuse me, the opening arguments on
a

21 particular case that I might be called to testify on.

You

22 know, I typically have not asked for opening arguments
on

23 related cases.

24 But with that background, if you're asking me why
25 might opening arguments on related cases be relevant, is

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1 that your question?

2 BY MR. GOLDSTEIN:

3 Q Yes.

4 A Well, there's two reasons: One is to the extent
5 to which the facts are the same, there may be, you know,
6 the emphasis that the trial attorneys are putting on
7 certain facts may be of interest to me.

8 Secondly, I think if there's relevance, it would
9 possibly come up in terms of trial strategy. Because
10 frequently an attorney will tip their hand on a trial
11 strategy in their opening statements.

12 Q So you would like to know in advance of
13 testifying in a case what the strategy would be of the
14 person that's confronting you, for example, or going to
15 confront you?

16 A I put it somewhat differently. On cases which
17 I'm asked to testify, you know, typically maybe I come
in

18 to court for half a day or a day, maybe two hours, but
I'm

19 not sitting there and I'm not aware of what's in the
mind

20 of the jury.

21 So getting the opening statements will help me

22 understand what the jury's heard, and frequently I'll
also

23 ask for the statements or the testimony of other
witnesses

24 so that I can get some sense of what the jury's already
25 heard and what the arguments are that the lawyers are
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1 putting forward.

2 Q Sort of to help you become a better expert

3 witness, if you will?

4 MS. BROWDY: Objection to the form.

5 You can answer if you can.

6 THE WITNESS: No. I would say to make my
7 testimony more relevant. I don't want to be saying things
8 that the jury has heard 16 times already.

9 I want to position my particular expertise in a
10 context where it can be best understood.

11 BY MR. GOLDSTEIN:

12 Q Okay. These three CDs that are in front of you,
13 can you explain what those are?

14 A Yes. These are the CDs which contain the
15 reliance index and documents from the U.S. case.

16 Q Okay. And in a similar fashion, you or
17 Dr. Ingberman -- did I pronounce it correctly?

18 A Ingberman.

19 Q Ingberman, sorry. Assembled something similar
20 for this case as in the U.S. case? I mean in the same
21 type --

22 A Yes. You have been given here, I believe --
23 this is Reller Reliance index and rreliance images.

24 Q Okay. If you received documents -- strike that.

25 Let me ask you a different question.

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1 Did you receive from Ms. Browdy some documents
2 that you were to review in connection with this case
prior

3 to rendering testimony?

4 A Yes, I believe we did receive some documents.

5 Q And how many such documents did you receive, if
6 you recall?

7 A Well, the -- do you have the index for Reller
8 here?

9 Q Yes.

10 A All right. You've got it.

11 Q First, before you look at it, let me just ask
12 you. Is there any way from looking at the document, if
13 you can tell me what on this list was specifically
obtained

14 from Ms. Browdy?

15 A I can't comprehensively answer that.

16 Q Okay. So there's nothing that has initials or
17 anything that would indicate the source of the various
18 documents included thereon; right?

19 A By "source," you mean who transmitted --

20 Q Yes.

21 A -- not who created it? Right.

22 Q Where it was obtained from is what I mean.

23 A I don't believe so. But I can check.

24 Q Well, how would you go about checking if you were
25 to check?

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1 A I'd ask Dr. Ingberman.

2 Q Of course.

3 Where is he today? Is he at the hotel or did he
4 go back?

5 MS. BROWDY: That's asked and answered, but you
6 can answer it again.

7 THE WITNESS: I believe he's back in Emeryville.

8 BY MR. GOLDSTEIN:

9 Q Getting back for a moment to the verdicts that
10 were rendered in Bullock and Boeken, if you were to
assume

11 that I accurately recounted the results of those trials,
in

12 other words, the findings were that there was fraud
13 commented and concealment on the part of Philip Morris
in

14 terms of concealing known health risks from the public
for

15 an extensive period of time, would that information be
16 something that was contrary to your personal beliefs as
an

17 expert here today?

18 MS. BROWDY: Objection to the form. Improper
19 hypothetical. Compound.

20 You can answer if you can.

21 THE WITNESS: Can I have it read back.

22 (The pending question was read
23 back by the Court Reporter as follows:

24 "Getting back for a moment to the
25 verdicts that were rendered in Bullock

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1 and Boeken, if you were to assume that

2 I accurately recounted the results of

3 those trials, in other words, the

4 findings were that there was fraud

5 commented and concealment on the part

6 of Philip Morris in terms of

7 concealing known health risks from the

8 public for an extensive period of

9 time, would that information be

10 something that was contrary to your

11 personal beliefs as an expert here

12 today?")

13 THE WITNESS: Well, what I've been asked to look

14 at as a conspiracy question is whether pursuant to joint

15 behavior the defendants engaged in activity which
impacted

16 the market for information and innovation.

17 I'm really quite frankly only interested -- well,

18 not only, but I'm primarily interested in the areas for

19 which I'm going to be giving opinions. And I have

20 confidence in my opinions and so I'm not sure whether

21 what's flowing through from other cases, is the jury

22 looking at the same facts, getting the same

understanding

23 of things --

24 BY MR. GOLDSTEIN:

25 Q Well, I'm --

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1 MS. BROWDY: Excuse me. I don't believe he's

2 done with his answer.
3 THE WITNESS: There's all kinds of factors that
4 can produce an outcome in a courtroom, as both you and I
5 know.
6 So I've certainly noted the fact if someone
7 points out there's a finding, and certainly don't dismiss
8 that, but really to me what's important is my opinions
and
9 bases for my opinions, I need to be comfortable in those,
10 and I am comfortable.
11 BY MR. GOLDSTEIN:
12 Q Well, in fact, on the designation it says that, I
13 believe, you are going to testify concerning the issue
of
14 the conspiracy to suppress information and an alleged
15 conspiracy not to conduct research.
16 That's a correct understanding of areas in which
17 you're prepared to testify at trial about; correct?
18 A Part of the core areas, yes. The outline I
19 think goes a little beyond that.
20 MS. BROWDY: And you're referring to Exhibit 1?
21 THE WITNESS: Correct.
22 BY MR. GOLDSTEIN:
23 Q And you do not believe that there is sufficient
24 evidence or there exists evidence of such a conspiracy
that
25 the plaintiffs have alleged in this case; correct?
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1 A I don't believe there's evidence in the
2 marketplace, in other words, I cannot see that
information
3 on the health effects of smoking has been suppressed. The
4 marketplace is full of such information.
5 And with respect to an evasion, while it's true
6 that there probably isn't something that experts would
7 agree is a safer cigarette, there certainly have been
8 significant efforts, the absence of -- the absence in the
9 marketplace of a safer cigarette is not evidence that
there
10 was a conspiracy to suppress one.
11 The fact that there was significant expenditures,
12 significant activity over a long period of time is in
fact
13 contrary to an allegation of a conspiracy.
14 Q I want to not ask you about the safer cigarette
15 issue for a moment.
16 A Okay.
17 Q I want to concentrate, if we could, on the issue
18 about conspiracy to suppress known health risks. And you
19 said that the marketplace is flooded or full of
information
20 about health risks today.
21 Is that what you meant to say, that it's present
22 today?
23 A That is certainly correct.
24 Q Okay.
25 A I believe that probably from 1964 on there was
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1 acceptance in the broader community that smoking caused
2 cancer and there was -- you know, in the period up until
3 1964 there was, you know, a debate among different

parties

4 as to what the evidence was and what it showed.

5 Q And you believe that as of 1964 it was fairly
6 well settled that there was no longer that type of
concern?

7 A I think the Surgeon General's report in '64 is
8 sort of a threshold event.

9 I believe the -- for all practical purposes, the
10 conventional wisdom changed from then forward to
11 conventional wisdom that was that, yes, there is a cause
12 and effect, and certainly from a public health
perspective

13 it's certainly something that one should act on, and
indeed

14 there was significant action.

15 (Brief recess.)

16 BY MR. GOLDSTEIN:

17 Q Did the fact that judge and juries in at least
18 two cases in California had findings that there was
proof

19 to a reasonable certainty of suppression of the very
things

20 you're testifying about cause you to reconsider the
21 position you've proposed to testify about?

22 MS. BROWDY: Objection to the form as
23 mischaracterizing, but you can testify if you can.

24 THE WITNESS: First of all, I'm not precisely
25 sure what the jury did conclude, but I'm not sure that

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1 there was, you know, economic evidence put forward on
what

2 to me at least are, you know, economic questions. And so

3 I don't necessarily take pause on other jury findings.

4 What I have to look at is the evidence in front

5 of me, and what it says to me as an expert that's spent
6 time working these issues.

7 BY MR. GOLDMAN:

8 Q Well, did you not consider the verdicts as part
9 of your reliance material?

10 A The verdicts?

11 Q Well, let me rephrase.

12 Did you consider evidence from either Bokin or

13 Bullock in formulating your opinions that you're
rendering

14 in this case?

15 A Well, there are various documents from the

16 Bullock cases, transcripts of the proceedings.

17 Q What do you remember -- without reading, because

18 I'd like you not to be prompted by documents; I'd like
you

19 to tell me as you sit here today if you can recall
whatever

20 documents you reviewed from Bullock.

21 I had understood your testimony previously to say

22 the information you knew about Bullock was that which
you

23 read in the newspaper, period. In fact, I'll represent
to

24 you that's my recollection of what you testified to.

25 A Yes, I think there were some documents that were

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1 introduced into Bullock that I may have -- that I have
2 read. I don't recall as I sit here right now where they
3 came from.
4 When I look at a document, I look at the source
5 of the document. I don't necessarily pay particular
6 attention to whether it was introduced into this case or
7 that case.

8 MS. BROWDY: Let me just take a real quick break,
9 if you will.

10 Off the record.

11 (Brief recess.)

12 BY MR. GOLDSTEIN:

13 Q Doctor, why is it that you would list -- strike
14 that.

15 You said that you recall reviewing some documents
16 from Bullock that may have been introduced at trial; is
17 that right?

18 A Yes.

19 Q What about trial transcripts, you've listed on
20 here at least approximately a dozen different
transcripts

21 of the Bullock trial, not documents, but the full trial
22 transcripts were listed here, and you didn't tell me
that

23 you had reviewed that.

24 Now, I wonder why it is that -- first of all, did
25 you review transcripts from the Bullock trial?

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1 A Personally, I did not.

2 Q Why was it listed in your materials here?

3 A I believe Dr. Ingberman did, or at least he
4 reviewed some part of it.

5 Q Was that requested from Ms. Browdy?

6 A I don't know.

7 Q Okay. Did you personally request it?

8 A No.

9 Q Do you know whether Dr. Ingberman did? Do you
10 know if he requested those documents?

11 A I don't know.

12 Q Okay. That would not typically have been
13 something that you would have instructed him to ask to
14 obtain for your review as an expert witness prior to
giving

15 testimony; is that right?

16 A Well, I should explain that any person that's
17 assisting me, you know, has a general mandate at any
time

18 to get anything that's potentially relevant to my
19 testimony.

20 In other words, I don't necessarily specifically
21 spell out precisely what I think they should get for me
in

22 great detail and how it relates to general categories,
23 general topics and things of that kind.

24 He has the mandate and always has the mandate to
25 get any additional materials that he thinks is relevant

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1 that he may wish to draw to my attention.

2 Q You didn't -- but so that I'm clear, not only did
3 you not review that, but you weren't provided a summary
of

4 those -- of the testimony in that case; is that right?
5 A Correct. Not a written summary.
6 I mean at one point or another he may have
7 summarized Fred Bullock.
8 As I sit here right now, I can't recall anything,
9 but there's a number of things he tells me I sometimes
10 forget, unfortunately.
11 Q Do you know if Bullock was male or female, the
12 plaintiff in that case?
13 A I think the first name is Betty, so I'm assuming
14 she's a woman.
15 Q Okay. With respect to the -- any verdicts that
16 may have been rendered against Philip Morris, then, you
17 don't particularly factor those into account in
rendering
18 your opinions concerning the existence or non-existence
of
19 a conspiracy; correct?
20 A That would be fair. I look at the evidence
21 before me, make sure I have seen the relevant evidence.
22 You know, there's so many things that go on in
23 courtrooms, that I don't necessarily put particular
meaning
24 on any particular verdict, particularly when there's an
25 appeal process.

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1 It doesn't to me convey any particular truth in
2 and of itself.
3 Q Let me ask you a hypothetical now. Had you
4 mentioned that CTR or TIRC -- and you may have misspoken,
5 but with respect to the entities we discussed previously,
6 you mentioned that one of them you thought served a
7 function more of a public relations nature.
8 A I believe I corrected the record to say it was
9 TI.
10 Q Okay. Tobacco Institute.
11 Now, to the extent that -- I'm sorry. Was it
12 your understanding that the Tobacco Institute was an
entity
13 that was comprised of a number of the member companies
who
14 manufacture tobacco in this country?
15 MS. BROWDY: Objection to the form of the
16 question.
17 You can answer if you can.
18 THE WITNESS: When you say "comprised of, do you
19 mean its membership consisted of?
20 BY MR. GOLDSTEIN:
21 Q My understanding is that's the word that they
22 used. Maybe not, but do you have information to the
23 contrary? I mean to your knowledge is the Tobacco
24 Institute an entity that is somehow related to the
various
25 manufacturers of tobacco in this country?

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1 A Yes.
2 Q And in what way is it related to them?
3 A I believe it was incorporated by them and funded
4 by them, and I don't know where the employees came from,
5 but they could have been transferred. I just don't know.
6 Q To the extent that some industry entity serves a

7 public relations function, if they -- if you learned that
8 they were putting out knowingly false information to the
9 public, would that be something of which you would be
10 critical in analyzing whether or not they were guilty of
11 suppressing information?

12 MS. BROWDY: Objection to the form.

13 But you can answer if you can.

14 THE WITNESS: When you say "knowingly false," you
15 mean where they knew it was false or whether other
people

16 thought it was false?

17 BY MR. GOLDSTEIN:

18 Q Whether they're putting --

19 A Who is the --

20 Q The person that's disseminating information.

21 If I asked you to assume that an entity which is
22 funded by the various tobacco manufacturers is knowingly
23 for a period of years putting out false information to
the

24 public about known risks, is that something that you're
not

25 aware of based upon your research that you've done into
the

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1 subject?

2 MS. BROWDY: I'm going to object as an improper
3 hypothetical.

4 But you can answer if you can.

5 THE WITNESS: Let me make sure I understand. I

6 mean what is the nature of such information
dissemination?

7 Are you talking about press releases or --

8 BY MR. GOLDSTEIN:

9 Q I'm asking you to assume for purposes of this

10 question that the Tobacco Institute or another industry
11 entity and its members combined to knowingly disseminate
12 information to the public that they know to be false and
13 thereby suppressing known risks that they're aware of of
14 the use of tobacco to the public.

15 Do you have a belief whether that would be
16 appropriate if you learned that that was true?

17 A Well, first of all, let me pass your question.

18 I think the first part of your question was if the
19 companies were knowingly put out -- putting out
information

20 that was false. You know, that would be reprehensible
21 behavior.

22 Then the next part was the "thereby." It wasn't
23 clear to me that the thereby followed, because to figure
24 out whether or not such information -- and we're talking
25 here in a hypothetical, had any impact, you would need
to

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1 know what are the other sources of information and what
is

2 the manner in which it's being disseminated, who's
3 listening to it, whether it gets swamped in a sea of
4 information to the contrary.

5 As an economist, you know, there has to be a link
6 to an effect to really, you know, have any significant
7 harm. That doesn't necessarily change the character of

8 the behavior, but it does change the nature of the
impact.
9 Q Well, now, one of the premises that I think you
10 were alluding to early on was that you don't believe
that
11 there was a true conspiracy in part because you don't
12 believe that they could have, meaning -- "they" meaning
the
13 tobacco industry -- could have acted together for a long
14 duration. That was one of your answers, was it not?
15 A What I testified to was that, you know, if you
16 have joint action over a 50-year period, which is
contrary
17 to individual behavior, because a conspiracy requires
that
18 you're doing things that are not in your own individual
19 interest; otherwise you would just simply do them
20 individually.
21 So conspiracy to me as an economist at least
22 requires that you set aside your own individual interest
23 and pursue some joint interests, and it's only because
24 everyone's participating, or certain key players are
25 participating, that it makes sense to do so.

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1 And what I testified to was to hold such an
2 arrangement together which is contrary to individual
3 interest means that you have to protect it, the
4 arrangement, from people cheating on it in some fashion
or
5 otherwise taking advantage of it through their own
6 individual actions.
7 Q Are you aware whether the consumption of tobacco
8 has changed over time since 1954 in the United States?
9 MS. BROWDY: Objection to the form of the
10 question.

11 You can answer if you can.

12 THE WITNESS: I have looked at various times at
13 the consumption of tobacco. I've looked at, you know,
the
14 sales, numbers for cigarettes. I have looked at such
15 information.

16 BY MR. GOLDSTEIN:

17 Q Okay. And what is your opinion as to
18 present-day sales versus those that occurred, say, in
1954?

19 A You mean in dollar terms or in tons of tobacco or
20 what?

21 Q Let's say the percentage of the population that
22 consumes tobacco today.

23 A I --

24 MS. BROWDY: Objection to the form of the
25 question.

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1 THE WITNESS: If you're asking me about
2 prevalence rates, I believe that they have dropped as a
3 percentage of the total population. The number of people
4 smoking is less.

5 BY MR. GOLDSTEIN:

6 Q Okay. Did you see any televised coverage of the
7 Waxman Commission when Congress -- it was a commission
that

8 was convened in 1954 -- I'm sorry, 1994, at which the heads

9 of seven tobacco companies were called to testify before
10 Congress about whether or not tobacco was addictive?

11 A No, I didn't see that.

12 Q Okay. In the materials that you reviewed, did
13 you find any evidence that smoking of tobacco does cause
14 one to become addicted to it?

15 MS. BROWDY: Objection to the form.

16 You can answer if you can.

17 THE WITNESS: First of all, I'm not an expert on
18 addiction.

19 What I have noted has not been the focus of my
20 attention, but the definition of addiction has changed
over
21 time.

22 BY MR. GOLDSTEIN:

23 Q How many verdicts are you aware of that have been
24 rendered against one of the tobacco manufacturers in
this

25 country, say, in the last five years in which there's
been

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1 a finding of punitive damages?

2 A I'm aware of Bullock and I think Bowkin. I
3 don't know if there are others. I think maybe Whitely
4 too. I just don't follow that on a regular basis.

5 Q So to the extent that you become aware of a
6 finding of a -- a judicial finding by a judge or jury of
a

7 conspiracy to suppress information, do you dismiss that
as

8 being an anomaly that's something that is just the
9 byproduct of a chance verdict?

10 MS. BROWDY: Objection. Well, objection to form
11 and characterization of the facts.

12 But you can answer if you can.

13 THE WITNESS: Could I have it read back, please.

14 (The pending question was read
15 back by the Court Reporter as follows:

16 "Q So to the extent that you become
17 aware of a finding of a -- a judicial
18 finding by a judge or jury of a
19 conspiracy to suppress information, do
20 you dismiss that as being an anomaly
21 that's something that is just the
22 byproduct of a chance verdict?")

23 THE WITNESS: No. I mean I do know that
24 sometimes there's a difference between what the lower
25 courts determine and what, you know, the appeals court
may

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1 say.

2 You know, as an economist, I don't sort of tend
3 to go around studying court opinions or jury opinions.
4 And frequently to understand them you have to know the
5 totality of the allegations that are brought, the nature
of

6 the con -- if the conspiracy is alleged, the nature of
that

7 conspiracy, the way in which it was litigated. All of

8 these things can go into a judicial outcome.
9 BY MR. GOLDSTEIN:
10 Q Well, now, you would not knowingly stand up
11 regardless of how much money you were paid for -- and
12 take
13 a position which you knew to be contrary to the law or
14 the
15 facts; right?
16 A Contrary to the law?
17 Q Or the facts, yes.
18 A First of all, I'm advised of the law. I'm not a
19 lawyer, but I think it would be fair to say, yes,
20 indeed, I
21 would not stand up and give an opinion that's contrary
22 to -- certainly to the facts.
23 The opinions get interpreted by the law. You
24 know, the Court determines whether or not certain
25 behavior
26 is contrary to the law. Usually that's not -- in a
27 particular matter it's not decided unless you're doing
28 damages and liability has been found.
29 You know, the fact that there has been one Court
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31 100
32 1 decision doesn't mean that the other one has to
33 2 automatically be the same. If that was true, I mean I
34 3 wouldn't understand the reason for the trial.
35 4 MS. BROWDY: I'm sorry. Off the record for a
36 5 second.
37 6 (Brief discussion off the record.)
38 7 BY MR. GOLDSTEIN:
39 8 Q With respect to the issue of damages, you're not
40 9 going to be offering any opinions concerning the
41 10 propriety
42 11 of punitive damages or the extent or anything of that
43 12 nature; correct?
44 13 A In this case, that's correct.
45 14 Q Now, have you offered opinions before, written
46 15 articles on punitive damages?
47 16 A I haven't published an article which is entirely
48 17 focused on punitives. I have discussed punitive issues
49 18 in
50 19 articles that I've written on damages.
51 20 Q Okay. Have you ever expressed the opinion that
52 21 in order to properly publish a wealthy defendant, it's
53 22 important to assess damages in a sufficient amount to
54 23 get
55 24 their attention, or words to that effect?
56 25 MS. BROWDY: Objection. Beyond the scope.
57 26 You can answer if you can.
58 27 THE WITNESS: No, I haven't testified along those
59 28 lines. I have looked at the question of deterrence from
60 29 David Teece Depo Reller v PM May, 2003 Page 101 of 149
61 30 101
62 31 an economic point of view, the purpose of how punitives
63 32 is
64 33 to deter behavior. So I have thought about what is needed
65 34 to deter behavior in the context of particular cases.
66 35 MR. GOLDSTEIN: Right. And I want to know
67 36 because I know he has written articles about punitive
68 37 damages.
69 38 Q Can you share for me what your opinion is on
70 39 deterrence? What have you written about the issue of

9 punitive damages versus deterrence against a wealthy
10 corporate defendant?
11 MS. BROWDY: Well, again, I'm going to object as
12 you've already established it's beyond the scope of this
13 witness's anticipated testimony in this case, but I
won't
14 instruct him not to answer.
15 MR. GOLDSTEIN: That's fine.
16 THE WITNESS: I'm not sure that there's any
17 discussion of that in my publications.
18 What I have looked at in the context of
19 intellectual property is the concept of what I call an
20 infringes royalty and whether or not, you know, the
purpose
21 of an infringes royalty is to deter infringement, and
I've
22 commented on the fact that that isn't the same thing as
23 punitive damages.
24 BY MR. GOLDSTEIN:
25 Q But is another way of saying it infringes royalty
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1 to remove the financial benefit that may have been
2 wrongfully obtained in that context?
3 A Intellectual property is not antitrust, but the
4 answer is no. I mean compensatory damages will compensate
5 the plaintiff.
6 I think you're thinking about the concept of
7 unjust enrichment. That's a different concept indeed.
8 Again, the concept of an infringes royalty is
9 that you're trying to deter behavior because you
recognize
10 that not all instances of infringement are going to be
11 detected, and so you want to create a circumstance where
12 individual companies don't roll the dice and say, "Well,
13 look, I'll infringe because I may get away with it."
14 You take into account regarding damages that --
15 one, you take into account, A, that you want to deter
16 infringement. And also in the context of intellectual
17 property, once the patent has been established to be
18 invalid and infringed, it's actually a different
product.
19 The very nature of what's been misappropriated,
20 if you will, or infringed, actually changes during the
21 litigation, assuming it's the first time that the
patent's
22 been tested.
23 Q Okay. Other than on those occasions when you've
24 testified as an expert witness, what litigation have you
25 been a party to personally?
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1 A I'm not sure I've been a party to anything
2 personally.
3 There may have been a minor real estate matter
4 where a complaint was brought in my name at one point,
but
5 I believe that was settled. I wasn't pressed.
6 Q I have that you appeared probably nine or ten
7 times in court. That's not your recollection?
8 A On my own --
9 Q As a party, yes.
10 A No, I don't think so.

11 Q Maybe it's another David Teece. I don't know.
12 Could be.
13 How about Leo Rodriguez, do you know him?
14 A No. Oh. It's conceivable that an individual
15 who manages my real estate may have in the case of a
tenant
16 issue, may have pursued a tenant, but I would be unaware
of
17 it if that's the case.

18 Q How about Amy Velazquez?

19 A I don't recognize those names.

20 Q I wanted to ask you about something called the
21 Teece Irrevocable Trust Number 3. Can you tell me what
22 that is?

23 A Can you tell me when it was established?

24 Q I was going to ask you that question. I have a
25 document that was recorded or is in reference to a
document

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1 recorded January 18th of 2001. That entity made a \$2
2 million loan. Does that refresh your recollection?

3 A I think that's an education trust.

4 Q What do you mean by that?

5 A It's a trust that is designed to pay -- this is
6 generations giving trust. That is designed to pay
7 tuition, college tuition of my descendants.

8 Q Okay. Who is James Castellanos?

9 A He is a real estate partner of mine.

10 Q In what businesses?

11 A In what businesses?

12 Q Yes.

13 A Real estate.

14 Q Well, what are the names of the different -- you
15 have a number of different companies with names; right?

16 A I don't know. Probably yes, but I don't know
17 what they are.

18 Q Okay. Who manages all your real estate
19 investments?

20 A James Castellanos and Patrick Kennedy.

21 Q Do you hold a management position in a company
22 called Paloris?

23 A It's -- the reason I'm hesitating is there's not
24 much being managed there. But if there's a management
25 position -- there's no management position as such in
that

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1 company.

2 Q Well, is it a corporation?

3 A Yeah, I believe.

4 Q And do you serve as an officer of that
5 corporation?

6 A Yes, I believe I do.

7 Q You didn't list that on your CV; right?

8 A Correct.

9 Q On occasions when you've purchased real estate,
10 you have applied for loans, have you not?

11 A Yes.

12 Q And you've signed a real estate application form?

13 Are you familiar with those?

14 A Yes.

15 Q On how many occasions have you applied for real

16 estate loans when you've listed your intention to
purchase
17 as a personal residence of yours?
18 A I don't know.
19 Q I take it that when you applied for a loan to
20 purchase your residence at [DELETED], that was an
21 application you filled out when you checked indicating
that
22 you wanted to live there personally; is that right?
23 A Yes.
24 Q Okay. Do you remember doing the same thing on
25 any properties that were investment properties, in other
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1 words, that you signed a statement on a federal
application
2 that indicates that you are attempting to purchase real
3 property that you're buying for investment purposes but
you
4 in fact declared under oath that you were buying the
5 property to live in?
6 A I don't believe that that's the case. I mean I
7 have a number of residences.
8 Q Okay. Who is Stacey Gallagher?
9 A I don't know.
10 Q How about Ritchie Teece?
11 A Don't know.
12 Q You don't know R-I-T-C-H-I-E T-E-E-C-E?
13 A Never heard of that person.
14 Q Have you ever been a victim of identity theft?
15 A Not to my knowledge.
16 Q Do you own a property in [DELETED]?
17 A Yes.
18 Q [DELETED]?
19 A Yes.
20 Q And where is that located?
21 A In [DELETED].
22 Q Is that the property you talked about previously?
23 A No. I think you talked about, what, in the
24 [DELETED] area.
25 Q Is that [DELETED]?
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1 A Correct.
2 Q When -- so when you gave me your list before of
3 residences that you owned, you did not mention the
4 [DELETED]; is that right?
5 A I believe I mentioned [DELETED], and both of
6 these are in the [DELETED] area. There are two separate
7 properties.
8 Q Okay. But when I asked you about it, you didn't
9 tell me there were two properties; is that right?
10 A I don't believe you asked me how many properties
11 there were.
12 Q Okay. Just for the record, I believe I did.
13 And I believe we went over four that you listed as
having
14 residences, but now is that another residence that you
own
15 in [DELETED]?
16 A Yes. With my wife.
17 Q And you occupy that yourself?
18 A Yes. It's not -- let me put it this way. It's

19 not a rental property.
20 Q Okay. So would it be correct, then, that you
21 really have five homes that you own? You mentioned four.
22 I want to make sure I have it accurate.
23 A I think I mentioned four locations, and one
24 location may be [DELETED]. There are two homes.
25 Q Okay. Any other homes that you own anywhere in
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1 the world that you haven't told me about?
2 A I believe that there may be some homes on --
3 though I have not visited them, there may be a home on a
4 property that I own in New Zealand. There's a farm.
5 Q Okay. And where is that located? What city?
6 A In [DELETED].
7 Q Any others?
8 A The question is are there any other homes that I
9 own?
10 Q Yes.
11 A That I'm aware of. I have partial interest in a
12 home with my brother.
13 Q Where is that?
14 A In the [DELETED] area.
15 Q In New Zealand?
16 A Yes.
17 Q Any others?
18 A Not that I can think of as I sit here right now.
19 As I said, sometimes I acquire property that may
20 have homes on it, and I may not necessarily be aware of,
21 but -- particularly if I'm in a minority position in the
22 property, but even if I'm not and somebody else is
managing
23 it, in other words, precisely aware of assets that are
in
24 place.

25 Q Okay. What is at 529 North Street in Teaneck,
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1 New Jersey?
2 A Nothing that I own.
3 Q You've never used that as an address?
4 A No.
5 Q How about you ever maintained an address of P.O.
6 Box 531 in Diablo, California?
7 A Not to my knowledge.
8 Q Okay. How about P.O. Box 149 in Newport, Rhode
9 Island?
10 A Not a residence.
11 Q Well, I understand. Did you ever maintain that
12 as an address?
13 A Not personally, no.
14 Q Okay. Well, who maintained is?
15 A I don't know that anyone did.
16 Q How are you familiar with that address?
17 A I'm not familiar with it.
18 Q Okay. So my mentioning it to you today is the
19 first time you've heard of it?
20 A That particular address, yes.
21 Q Well, did you ever maintain any business interest
22 in Newport, Rhode Island?
23 A Not to my knowledge.
24 Q Did any of your affiliated entities that you've
25 owned or controlled during the period of 1999 ever

maintain

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1 an address in Newport, Rhode Island?

2 A Not to my knowledge.

3 Q How about P.O. Box 3070, Sausalito, is that

4 yours?

5 A No.

6 Q You've never used that address?

7 A Well, it's not -- I don't have such an address.

8 Maybe 15 years ago at one point there was a person
working

9 for me, and we used that as an address for the receipt of

10 rent checks from tenants and so forth.

11 Q Okay. How about [DELETED] in Sunnyville,

12 is that an address you recognize?

13 A Yes.

14 Q And what is that?

15 A I believe that's a building that I once owned.

16 I had a partial ownership in.

17 Q Okay. Did you apply for a loan at [DELETED]

18 when you purchased that property?

19 A I don't recall.

20 Q How about [DELETED] in Berkeley, is that

21 an address you recognize?

22 A Yes.

23 Q And what is that?

24 A That's a property that I once owned, or at least

25 I had partial interest in.

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1 Q How many pieces of real property do you presently

2 own, sir?

3 A I don't know.

4 Q Would it be more than ten?

5 A Probably.

6 Q Isn't it true that your annual salary for the

7 last five years has never been below \$1 million, your
gross

8 income?

9 MS. BROWDY: Again, I don't know the extent to

10 which, Doctor, you consider this confidential
information,

11 and I'm not going to instruct you to answer or not to
12 answer, but if there's something you need to take up
with

13 the Court, we can certainly do that.

14 THE WITNESS: Can I have the question read back?

15 (The pending question was read

16 back by the Court Reporter as follows:

17 "Q Isn't it true that your annual salary

18 for the last five years has never been

19 below \$1 million, your gross income?")

20 MR. GOLDSTEIN: Let me rephrase.

21 Q Is it not correct that for each of the last five

22 years you have never grossed less than one million
dollars?

23 MS. BROWDY: And, again, same caution, because

24 there's no confidentiality order in place in this case.

25 THE WITNESS: So there is no confidentiality?

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1 BY MR. GOLDSTEIN:

2 Q Well, I will represent to you it is not my
3 practice or intention to disseminate it to anybody, and I
4 know of nobody that it would be of interest to, and it's
5 not going to be publicized, to my knowledge.

6 MS. BROWDY: But, again, I don't have any means
7 as of this point of putting anything under seal. So,
8 again, if you prefer not to answer, and we have to take
it
9 up with the Court later, you can do that, but you can go
10 ahead and answer, but I just have to caution you I don't
11 have a means of sealing this as confidential at this
point.

12 THE WITNESS: Well, let me accept your
13 representation that it's not going to be used, because
14 clearly this is a sensitive matter for my wife and
children

15 in particular. We don't want to become targets --

16 MS. BROWDY: Well, let me also caution. When he
17 says he's not going to use it, if it's on the record in
the

18 deposition, he can cross-examine you in open court on
that

19 in front of a jury in the gallery.

20 MR. GOLDSTEIN: Well, assuming that the Court
21 permits inquiry and assuming that's even a relevant
issue.

22 Let me just clarify this. My purpose is not to
23 embarrass you or to impress the other people here how
well

24 you do or not do.

25 I think it's a relevant and fair area, because
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1 one of the issues is the extent to which witnesses,
expert

2 witnesses particularly, derive their salary, and for a
lot

3 of reasons which I'm not going to go into now, but I do
4 think that it's -- I'm trying to give you an alternative
to

5 asking the specific numbers which might likely be much
more

6 significant than the seven-figure threshold. I'm just
7 trying to be gentle.

8 But I could come back with, "Okay, Doctor, tell
9 me what each year you made." She, of course, could
10 object. But I'm not trying to embarrass you at all. I
11 just want to go through this and get an idea.

12 MS. BROWDY: And, again, just to caution the
13 witness, as I said, there's no confidentiality order in
14 place, and with all respect to the bonafide of counsel
here

15 on the other side, there would be nothing to prevent
anyone

16 from taking this transcript, sending it to the "New York
17 Times," publishing it to the jury, et cetera, until we
have

18 follow-up from the Court. So it's not --

19 MR. GOLDSTEIN: I can represent to you it is not
20 going to be sent to the "New York Times" or any
newspaper.

21 Okay.

22 And I -- and I'll tell you as a parent, I'm very

23 sympathetic. I would never do anything that would
subject
24 him to personal jeopardy or prejudice with his family. I
25 just want to let you know.

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1 MS. BROWDY: I certainly respect, Counsel, this
2 is without any challenge to the bonafide of counsel to
the
3 other side, but this is in -- nothing in this deposition
4 right now is under seal. So you have to go forward,
5 assuming it's a matter of public record.
6 There are other cases where counsel would seek
7 transcripts from previous cases, et cetera, and, again,
8 going forward, you have to assume that if you answer now,
9 it is as if you were answering in open court.

10 THE WITNESS: Could we discuss this outside the
11 room?

12 MR. GOLDSTEIN: Sure. Let's go off the record.

13 (Off record at 12:35 p.m. until 12:45.)

14 (This portion of the transcript contained in
15 confidential section under.)

16 BY MR. GOLDSTEIN:

17 Okay. Let's go back on the record.

18 Q Doctor, with respect to the rendering of opinions
19 that there was no alleged conspiracy by members of the
20 tobacco industry, including the defendants, to suppress
21 information, what do you believe gives you the basis to
22 venture an opinion on that subject?

23 MS. BROWDY: Objection to the form. Overbroad.

24 You can answer if you can.

25 THE WITNESS: Well, allegations have been made

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1 that the companies conspired, which is joint action, a
2 subject of economic analysis, and that the effect was
3 suppression of information in a market, and that is grist
4 for the mill for economic inquiry.

5 So what qualifies me is a number of things: One,
6 extensive work that I've done in the past on agreements
7 amongst competitors. I've also worked on agreements that
8 are -- of a vertical kind and not amongst competitors,
but

9 I've written extensively on collusion, cooperation and
10 joint action, but I've also written extensively on
market

11 definition, which is an issue herein directly; and I've
12 also written extensively on the new product development
13 process and the way in which innovation occurs, all the
14 challenges that products face in going to market or
coming

15 to market.

16 I've also written on the concept of technology
17 paradigms and studied the nature by which scientific and
18 technological beliefs change, and that's of some
relevance

19 in terms of understanding the backdrop within which
debates

20 were going on around the health effects of smoking.

21 BY MR. GOLDSTEIN:

22 Q All right. Now, in order to reach your opinion,
23 do you believe that it requires you to review all the
24 information on the subject?

25 MS. BROWDY: Objection to the form.

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1 You can answer if you can.

2 THE WITNESS: I think it requires extensive

3 review of pertinent information.

4 The real question, of course, is what is

5 pertinent. I believe that the conceptual ends that I

6 bring as an economist helps one figure out what's

7 pertinent, and one doesn't have to review everything.

8 There's a lot of facts or documents -- maybe

9 they're repetitive -- that indicate same phenomena. One

10 doesn't have to review every single one, but you have to

11 review enough to be confident that you haven't left any

12 significant stone unturned, that you understand the

context

13 of the behavior, that you understand the behavior

itself.

14 And importantly that you understand the

15 incentives that the parties place and the feasibility of

16 being able to conduct the object of the alleged

conspiracy.

17 BY MR. GOLDSTEIN:

18 Q Would it be -- if everybody's interest that were

19 involved in -- strike that.

20 Let us assume that there truly was a conspiracy

21 between members of the tobacco industry to keep this

22 information from the public.

23 First, would it not be in their interest,

24 assuming that if that information is out, it would

depress

25 sales, would it not be in their common interest to keep

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1 that information confidential?

2 MS. BROWDY: Objection. Improper hypothetical.

3 But you can answer if you can.

4 THE WITNESS: Let me see if I understand.

5 You're talking about the -- what I call first conspiracy

or

6 it could be the second, depending on which way you order

7 them, but the alleged conspiracy to suppress information

on

8 the health effects of smoking; correct?

9 BY MR. GOLDSTEIN:

10 Q Yes.

11 A And you're asking me is that not -- in the

12 hypothetical, might that not conceivably or likely be

13 consistent with their economic behavior? Is that your

14 question, or with their economic interest?

15 Q Wouldn't they have a common economic interest, if

16 you assume that disseminating information on health

risks

17 would depress sales, would you not agree that to the

extent

18 that there was a conspiracy if they all acted together,

it

19 would be within their economic interest to have done so?

20 MS. BROWDY: Again, object to the improper

21 hypothetical but you can answer if you can.

22 THE WITNESS: We're talking here in the

23 hypothetical. Let's suppose three companies, and let's

24 suppose your assumption is correct, namely, that if this

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1 demand for the product.

2 If that's the case, you don't need a conspiracy
3 because the individual incentives of each of the parties
4 would be sufficient to cause them to want to suppress.

5 If there's no other source of the information
6 that's uniquely controlled, though each have the same
7 interest, then you don't need a conspiracy.

8 BY MR. GOLDSTEIN:

9 Q Well, if one is asked by the others in the group
10 to continue to suppress information in a wrongful way,
11 which you said was -- I don't remember the word, was
12 horrific, or you had some adjective you used to describe
if

13 I asked you to assume they were disseminating false
14 information, would you not agree that it would take a
15 conspiracy for people to keep information which they
knew

16 they had an obligation to disclose legally?

17 MS. BROWDY: Objection to the form. Improper
18 hypothetical.

19 You can answer if you can.

20 THE WITNESS: Let me answer it in an abstract
21 level. The circumstance where you need an agreement or
22 conspiracy is where it's not in the parties' own
individual

23 interest to behave in that fashion, but it might be in
the

24 joint interest.

25 BY MR. GOLDSTEIN:

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1 Q So you're saying that because of the fact that
2 there's a common interest between all of them, there need
3 not have been a conspiracy?

4 A Well, we're talking here in the abstract. What
5 I simply pointed out to you is that if it's in the
6 individual incentive of three companies to engage in
7 certain behavior, then you don't need a conspiracy to
have

8 them behave in that fashion.

9 They may all behave the same way, but it would
10 not be pursuant to a conspiracy. It would be pursuant to
11 their own individual self interest.

12 Q So let me see if I understand correctly, then.

13 You're saying that -- well, let me ask you this:

14 Do you think that the tobacco industry, members of the
15 Tobacco Institute would each have had a common interest

--

16 and I'll give you a period of time. Say from 1954 to,
17 say, the mid to late 90's, to suppress information if it
18 was of a nature that would suppress sales? Does that
19 provide a member with sufficient economic incentive to
20 suppress information?

21 MS. BROWDY: Objection to the form. Improper
22 hypothetical.

23 You can answer if you can.

24 THE WITNESS: You know, there's also the question
25 of feasibility. One -- your question seems to imply that

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1 one was a unique guardian of certain essential
information.
2 If that's not the case, then it's sort of
3 relatively immaterial what the individual parties would
do.
4 They wouldn't have an incentive to behave in a certain
way
5 if it's likely to be completely ineffective.
6 BY MR. GOLDSTEIN:
7 Q Did you do a study of the conduct of the tobacco
8 industry after 1964 to present in terms of whether they
9 disseminated -- well, to the extent that they
disseminated
10 any information to the public about known risks?
11 MS. BROWDY: Objection to the form.
12 You can answer if you can.
13 THE WITNESS: Well, the basic structure of the
14 information generation and information dissemination
15 industry, if you will, didn't change very much. You
still
16 had, you know, hospitals, not-for-profits, National
Cancer
17 Institute, Lung Association, all of those entities were
out
18 there disseminating information pre-'64 and post-'64,
you
19 know, so the companies were only -- individually only
from
20 many, many different sources of information, and they
21 didn't necessarily or they didn't really control the
22 distribution process for that information either.
23 I mean it was very much modulated and regulated
24 by the government.
25 BY MR. GOLDSTEIN:
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1 Q Well, at the time that the National Cancer
2 Institute and American Lung Association, all of those you
3 just recounted, were putting out information extolling
the
4 dangers of tobacco use, was it not correct that at the
same
5 time the various members of the tobacco industry were
6 putting out contrary information in the press to the
public
7 raising doubts about the accuracy of the information that
8 the prior parties were reporting?
9 MS. BROWDY: Objection to the form. Overbroad.
10 You can answer if you can.
11 THE WITNESS: You know, post-'64, they kept
12 saying some of the same things that they were saying
13 pre-'64.
14 Whether anyone is listening or whether it has an
15 impact in the broader market for information is quite
16 another matter.
17 I believe that whatever they had to say was
18 completely marginalized and swamped by the tremendous
19 wealth of information, tremendous volume of information
20 that was coming from the other organs, if you will.
21 BY MR. GOLDSTEIN:
22 Q But would you concede with me as a general
23 proposition that at the time -- and I'm going to say up
24 until the mid 90's or late 90's, if you will, that the

25 tobacco industry was not conceding as it presently is today

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1 that tobacco use was a direct cause for lung cancer, for
2 example?

3 MS. BROWDY: Objection to the form.

4 THE WITNESS: As I said before, I believe they
5 continued to say some of the things post-'64 that they
had

6 said pre-'64. And -- yeah. Its character changed over
7 time, but they -- you know, I think indicated that
8 causality hadn't in their minds been established.

9 BY MR. GOLDSTEIN:

10 Q And that continued until roughly 1997 or '98 at
11 the master settlement agreement; is that right?

12 MS. BROWDY: Objection to the form. Overbroad.

13 You can answer if you can.

14 THE WITNESS: I'm not quite sure what "that" is.

15 I think there were occasional statements. I don't think
16 anybody was listening.

17 It was -- as I said before, it was -- you know,
18 in terms of what they were putting out was the yard
press

19 release, it really -- in the total scheme of things, as
a

20 percentage of the information flow, it was, you know,
21 extremely small.

22 BY MR. GOLDSTEIN:

23 Q Without trying to quantify the extent to which it
24 was -- any attention was paid to it or not, would you
not

25 agree, though, that at the same time that the American
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1 Cancer Institute, American Lung Association, National
2 Cancer Institute and such entities were talking about the
3 risks to one's health from using tobacco, at the same
time,

4 however marginal you care to characterize it, would you
not

5 agree that the tobacco industry was putting out
information

6 which raised doubt about the health claims that the
7 American Cancer Society and such were putting out?

8 MS. BROWDY: Objection to the form. Overbroad.

9 You can answer if you can.

10 THE WITNESS: I'm not sure that it raised doubt.

11 I mean once the conventional wisdom had changed in '64,
in

12 my view, you know, the doubt was gone. In fact, in many
13 people's minds the doubt was gone way before 1964.

14 But, you know, there was a new wisdom, I believe,
15 in society at large and in the economy at large that in
16 order -- one has to find a threshold event that
17 characterizes that new wisdom. It's the '64 Surgeon
18 General's report.

19 BY MR. GOLDSTEIN:

20 Q Right. Again, I'm not asking that question.

21 I'm not asking you to sit as a judge, juror or arbiter.

22 What I'm saying is have you not -- would you not

23 agree that however little attention you believe was
being

24 paid to it, the tobacco industry during that period of time

25 from 1954 to the late 1990's was still putting out
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1 information to the public about their view of things, that

2 the reports of health risks was greatly exaggerated?

3 MS. BROWDY: Objection to the form.

4 You can answer if you can.

5 THE WITNESS: I'm not sure whether that's a right
6 characterization. I think on the causation point, you
7 know, the Surgeon General had basically changed the
8 definition of -- well, not changed the definition, but
had

9 provided a different way to think about causation. And
10 arguably had changed the criteria for determining
causation

11 in '64.

12 And I don't think the companies, you know,
13 necessarily conceded that causation in a scientific
sense

14 had in fact been established.

15 BY MR. GOLDSTEIN:

16 Q You said that the tobacco industry was continuing
17 to put information out post-'64 as they had pre-'64.

18 And to follow up on your question, can you tell
19 me, between the periods of 1954 to '64, what is your
20 understanding of what the tobacco industry was putting
out

21 in terms of health risks to the public regarding the use
of

22 tobacco?

23 MS. BROWDY: Objection to the form. Compound
24 and overbroad, but you can answer if you can.

25 THE WITNESS: Well, I mean if you go back to the
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1 Frank statement, you know, the industry says, look,
there's

2 significant new -- I forget the exact words, if you can
3 find it, but essentially alerts people to the fact that
4 questions are being raised about the possible linkage of
5 smoking to cancer and public health in general. And, you
6 know, in the Frank statement, it says, you know, one
can't

7 dismiss this.

8 BY MR. GOLDSTEIN:

9 Q Well, it said I think that the -- the Frank
10 statement said that they will hold the health of its
11 consumers to be paramount in their business.

12 Do you remember words to that effect appearing in
13 the Frank statement?

14 A There are words that indicate that they hold
15 public health as a high -- you know, certainly a high
goal.

16 Yes, words to that effect. We can both check and find
the

17 precise words.

18 Q Right. But roughly we understand that's the
19 meaning that's attributed as well.

20 After 1964 when the Surgeon General report came
21 out, did you observe in any of your studies a change in

22 information that the tobacco industry was putting out
23 concerning health risks?

24 MS. BROWDY: Objection. Overbroad.

25 You can answer if you can.

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1 THE WITNESS: I really can't answer that. What

2 I said before is that I think some of the things they
were

3 saying before '64, they were saying after '64, they were

--

4 you know, they were continuing to fund research.

5 I mean I don't know whether you call that the

6 tobacco companies putting out research, but they were

7 funding research that other people were relying on,

8 including the government, so the totality of their
actions

9 are hard to characterize in terms of information that
they

10 were putting out.

11 Because if you're funding Dr. X at some research

12 institute, then arguably that should be attributed to
the

13 industry too.

14 But my point is that, yes, they were saying some

15 of the things post-'64 that they were saying pre-'64.

16 (Brief discussion off the record.)

17 BY MR. GOLDSTEIN:

18 Q As time progressed past '64, past '74, past '84,

19 past '94, would you agree that it became more well
known,

20 more widespread, that the risks of using tobacco or

21 absolute correlation to health risks -- I mean, yes.

22 MS. BROWDY: Objection to the form of the

23 question.

24 But you can answer that if you can.

25 THE WITNESS: I don't think I can. It's a bit

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1 convoluted.

2 BY MR. GOLDSTEIN:

3 Q Okay. Is it not correct that over time, between

4 '64 and 1998, that the health risks associated with
smoking

5 became more widely known and in the public?

6 MS. BROWDY: You can answer if you can.

7 THE WITNESS: As I said before, I really think

8 the sea change took place in '64.

9 I mean even pre-'64 there was a lot of

10 information and beliefs at least that smoking caused

11 cancer. But there was a sea change in '64 with the

12 Surgeon General's report. You know, the --

13 Q The question is was there a change over time.

14 A Yeah. And I'm not sure that it can be

15 accurately calibrated.

16 You have the warning labels coming in in '64

17 after the Surgeon General's report, and maybe in the mid

18 60's there was a period of new learning, but I think the

19 evidence suggests there's not been an information
deficit

20 in this marketplace for a long, long time.

21 Q Okay.

22 A Arguably since 1964.

23 Q Did you ever see a change in the information that
24 the tobacco industry was putting out to the public about
25 known health risks associated with tobacco since 1964 to
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1 the present?

2 MS. BROWDY: Objection. Overbroad.

3 You can answer it if you can.

4 (The pending question was read

5 back by the Court Reporter.)

6 THE WITNESS: When you say "information," you're

7 referring to the content or the amount of information?

8 BY MR. GOLDSTEIN:

9 Q Content.

10 A Um, I haven't looked at that in excruciating

11 detail. As I said before, some of the things they were

12 saying pre-'64 they continued to say post-'64.

13 Q Okay.

14 A That's in terms of content. In terms of

15 distribution, as I said before, I believe it was

16 marginalized.

17 Q Who is Juvnal Rios? Maybe I mispronounced it, or

18 Margarita or Juvnal, J-U-V-N-A-L, do you know them?

19 A I don't know.

20 Q Do you know who that is?

21 A No.

22 Q How about Gloria Sandoval?

23 A Don't know.

24 Q There's a record that you bought a piece of

25 property with them in July 5th of 2000, in Placer County

--

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1 or Alameda County, I'm sorry. Doesn't ring a bell?

2 A No.

3 Q How about Joseph Marvel? Do you know that

4 person?

5 A No.

6 Q Do you know Peter Lee?

7 A No.

8 Q Did you have an arrangement whereby on occasion

9 other people would be purchasing property with you? You'd

10 put up some money and they'd carry the payments or

11 something of that nature?

12 A No. Typically -- yes and no. I mean I have on

13 numerous occasions bought property with other people.

14 Usually the building would be carrying the interest.

15 Q Who is JEAT Enterprises?

16 A I believe it's an FLP.

17 Q What is an FLP?

18 A A family limited partnership.

19 Q It says here "enterprises and LP."

20 A Oh.

21 Q What have you done to determine the presence or

22 absence of a conspiracy with respect to the issue of
safer

23 cigarettes?

24 A Well, I've looked at the evidence put forward,

25 particularly in the U.S. case, and that is since the

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1 government hired experts that put forward evidence, and I

2 looked at everything that they looked at in that case.

3 I've looked at a number of other things in the
4 record.
5 For instance, I talked earlier about the
6 innovation record. So I've not only looked at things that
7 I think are pertinent. I've also looked at things that
8 experts that have testified on behalf of the government
9 have figured are relevant -- excuse me, what they think
are

10 relevant in terms of documents.

11 Q And have you --

12 Did you ever express an opinion regarding the
13 existence of whether a low tar cigarette or one that was
14 advertised as low tar is in fact truly lower tar than
the

15 conventional cigarette?

16 MS. BROWDY: Objection to the form.

17 You can answer if you can.

18 THE WITNESS: No.

19 BY MR. GOLDSTEIN:

20 Q You don't have an opinion on that?

21 A No. That's not in the area of my expertise.

22 Q Okay. Did you have any knowledge whether or not

23 Philip Morris ever marketed any of their products in
terms

24 of claiming that the consumption of low tar cigarettes
was

25 safer for one's health than conventional cigarettes?

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1 A Can I have that again?

2 (The pending question was read
3 back by the Court Reporter.)

4 THE WITNESS: Well, I do know that at various
5 points in time, you know, during the tar derbies, they
did

6 provide data with respect to the tar content of their
7 products.

8 Precisely what they said about low tar, I'd have
9 to go back and review the record, but I am aware -- I
think

10 it was -- was it Wynder or whatever had said that -- had
11 said to Congress that would be useful for them to do in
12 terms of public health.

13 BY MR. GOLDSTEIN:

14 Q So you don't know as you sit here today whether
15 or not -- first of all, do you know whether Philip
Morris

16 ever marketed cigarettes to have low tar in them? You do
17 know that; right?

18 A Yes. They did market low tar cigarettes.

19 Q And is it your understanding that one of the
20 reasons that that was done was to promote in the
consumer

21 the belief that it was better for their health than a
22 conventional cigarette?

23 MS. BROWDY: Objection to the form.

24 You can answer if you can.

25 THE WITNESS: I think in the public information

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1 demand at the time, members -- certain members of the
2 public health community were saying that low tar is
better

3 than high tar, or lowering tar is one thing that can
reduce

4 the risk of unfortunate health effects associated with
5 smoking. I mentioned Wynder. I believe there's other
6 people that were saying the same thing.

7 BY MR. GOLDSTEIN:

8 Q Now, if you were to learn, say, today, that that
9 was a scam, that that was a promotion which the company
10 knew to be false to induce people to smoke a low tar
11 cigarette when in fact they knew that it wasn't any
safer,

12 would that change your opinion at all about the
testimony

13 you're going to offer?

14 MS. BROWDY: Objection. Improper hypothetical.

15 You can answer if you can.

16 THE WITNESS: One -- let me understand. You're
17 saying based on what was known back then or based on
what's

18 known today?

19 BY MR. GOLDSTEIN:

20 Q Based on what was known at the time they put out
21 cigarettes that -- I'm asking you to assume that at the
22 time Philip Morris was marketing a low tar cigarette,
they

23 knew that it was not any safer for one's health.

24 Would that be conduct which you would find to be
25 unacceptable in terms of your view of their conduct?

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1 MS. BROWDY: Objection to the form of the
2 question.

3 You can answer if you can.

4 THE WITNESS: Well, I'm having trouble with the
5 hypothetical because I am aware of the fact that members
of

6 the public health community, including Dr. Wynder, were
7 saying at the time that this was beneficial.

8 So, you know, I think if -- if -- inasmuch as it
9 was supporting the public health community, you know, it
10 was a proper thing to do.

11 BY MR. GOLDSTEIN:

12 Q What I'm asking you, though, is if you were to
13 find out today that they were aware that -- and they
knew

14 about the dangerous propensities of low tar cigarettes
and

15 they knew that what they were telling the public was
false

16 at the time, would that change your opinion about their
17 conduct?

18 MS. BROWDY: And, again, improper hypothetical,
19 but you can answer if you can.

20 THE WITNESS: Well, first of all, you know, my --
21 the focus of my testimony is on these twin -- these twin
22 conspiracies.

23 I'm not sure it bears, your question bears,
24 directly on that. I think you're asking me to make a
25 judgment of a different kind or provide an opinion of a

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1 different kind.

2 BY MR. GOLDSTEIN:

3 Q To the extent that I am, go ahead and express it
4 because --
5 A Well, I guess maybe I'm having trouble with the
6 hypothetical because I'm well aware of the fact that
7 members of the public health community at the time at
8 least
9 were -- well, I suppose in Dr. Wynder's case advocating,
10 suggesting, that that was an appropriate response to
11 public
12 health concerns.
13 So if you're asking me to assume that the
14 companies didn't necessarily have any basis for
15 believing
16 that Dr. Wynder was correct, is that what you're saying?
17 Q No. No. I said assume for purposes of this
18 question that you learned that they knew at the time
19 they
20 were marketing a low tar cigarette as being better for
21 one's health, that they knew it wasn't better. Would
22 that
23 change your opinion about their conduct?
24 MS. BROWDY: And I'm going to still say
25 objection, improper hypothetical.
26 THE WITNESS: Yeah. Given latency effects, I
27 mean I don't understand how they necessarily couldn't
28 know
29 with great certainty, so perhaps you're referring to the
30 fact that maybe someone inside the company, there may be
31 a
32 document that questions whether there is -- the efficacy
33 of
34 David Teece Depo Reller v PM May, 2003 Page 135 of 149
35 135
36 1 this strategy.
37 2 That doesn't mean that the company didn't know or
38 3 did know.
39 4 BY MR. GOLDSTEIN:
40 5 Q But what I'm asking you to assume -- I'm not
41 6 asking you to say it's true. I'm asking if you learned
42 7 today that they were disseminating information about low
43 8 tar cigarettes which you found out to be was false, would
44 9 that change your impression about the ethical conduct of
45 10 the company?
46 11 A All right. So let me understand so it's not
47 12 objectively false. It's that they believed it was false
48 13 at the time?
49 14 Q Yes. If they --
50 15 A Whether subsequent research has established it to
51 16 be true or false.
52 17 Q No, if at the time they were putting out
53 18 information, they believed that it was false, would that
54 19 be
55 20 conduct which you would fault in such a company?
56 21 MS. BROWDY: Again, I'm going to object as
57 22 improper hypothetical.
58 23 But if you can answer that question as phrased,
59 24 feel free.
60 25 THE WITNESS: Well, I'm not sure I can answer it,
61 26 but I would point out that, you know, if respectable
62 David Teece Depo Reller v PM May, 2003 Page 136 of 149
63 136
64 1 external constituents are making statements that would
65 2 suggest the company's changed their behavior, and

companies

3 change their behavior to respond to that even though they
4 weren't convinced of the efficacy of it, no, I wouldn't
5 think that's improper in and of itself.

6 BY MR. GOLDSTEIN:

7 Q Okay. If you found that one of your clients that
8 you testify for in the tobacco industry has told you
9 information which is contrary to the truth, would you
10 continue to represent that client?

11 A You're talking about contrary to the truth. I
12 mean when we're talking about health effects of smoke,
13 knowing what the truth is is not something that's
14 completely unambiguous, particularly when you've got
15 latency effects.

16 I mean I think you're really trying to think --
17 you're over-simplifying the fact situation that the
18 industry was looking at at the time.

19 Q Okay. I didn't ask about health effects, but
20 let me -- Mr. Puize wanted me to ask you a few questions
21 about compensation.

22 Again, in terms of your work on the Whiteley case,
23 do you remember approximately how much you made in
services

24 rendered to a tobacco company in that case?

25 A No, I don't remember precisely.

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1 Q Okay. Can you estimate?

2 A My involvement was very limited. It was focused
3 on the punitive damage issues. And if I had to guess, it
4 was probably around \$100,000.

5 Q Okay. What was it about punitive damages you
6 testified about in that case? Do you recall?

7 A Well, I didn't testify in trial, but --

8 Q I'm sorry, in deposition.

9 A -- I was simply going to be teed up on the
10 question of deterrence, and, you know, addressing the
11 question of whether the -- how the regulatory changes
and

12 other activities transpired in the industry meant that
the

13 behavior in question was already deterred.

14 Q What about in another tobacco cases, can you
15 please quantify for me, say. In the Rivera case how much
16 you billed approximately in that case?

17 A Once again, there I was noticed I think on the
18 same issue, punitive damages, and I think it was about
the

19 same amount.

20 Q What about the U.S. case?

21 A That would have been more. There are a lot more
22 issues. I don't remember the precise number, but they're
23 probably around 200.

24 Q Okay. Where would one go to find this
25 information? Would you have it at your company?

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1 A No, I don't typically maintain billing records
2 once the issue is over.

3 Q Really? What about tax purposes?

4 A Well, once the income is received, I don't
5 precisely know what policies my office follows on that.

6 Q Who prepares your tax returns?

7 A I have an outside attorney.
8 Q And what's his or her name, please?
9 A Max Gray.
10 Q G-R-A-Y?
11 A I believe so, yes.
12 Q And where is he located?
13 A In the East Bay.
14 Q So to the extent that their billing records or
15 income records reflected, certainly he would have a copy
of
16 those, would he not?
17 A I'm not sure he does.
18 Q Well, what's the document retention program or
19 the policy that you follow with respect to billing
records
20 on various tobacco cases?
21 A I have a lady that takes care of those matters
22 for me, and I don't know precisely what her policy is,
but
23 she takes care of that and works with Mr. Gray to make
sure
24 the information that I need for tax purposes is
provided.

25 Q And where does she work?

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1 A She works in Emeryville.

2 Q In your office?

3 A No.

4 Q What her name, please?

5 A Ann Misaka.

6 Q How do you spell that?

7 A M-I-S-A-K-A.

8 Q I'm sorry, M-I-S --

9 A M-I-S-A-K-A.

10 Q Okay. When you are paid for your work on this
11 case, is it paid directly to -- I see here it says
12 Enterprise Research, Incorporated.
13 That's another company I hadn't heard about.
14 What is that?

15 A That's a company that I use for various
16 consulting activities.

17 Q That's apart from the four-letter LECG, or is
18 that what it is?

19 A Correct.

20 Q So when you render services, LECG doesn't bill
21 for your time; is that right?

22 A In some cases it does, but in some cases it
23 doesn't. It all depends on the nature of the client
24 relationship.

25 Q Is some of the work you've done in this case

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1 billed partly through Research Enterprise, Inc. and
partly

2 through EC?

3 A No. It was all billed through Enterprise
4 Research.

5 Q Okay. And the address listed there is the same
6 address of LECG; is that right?

7 A No, it's not.

8 Q Same building?

9 A Same building.

10 Q Next-door suite or -- is it on the same floor?
11 A No.
12 Q How many people work at LECG?
13 A Worldwide?
14 Q Yes.
15 A Oh, about 650, I believe.
16 Q And how many different offices do you maintain?
17 MS. BROWDY: Him or LECG?
18 MR. GOLDSTEIN: LECG.
19 THE WITNESS: Approximately 20.
20 BY MR. GOLDSTEIN:
21 Q Where are they located? All over the world?
22 A Yes.
23 Q And how about Enterprise Research, Inc.? How
24 many offices does that have?
25 A Just one.

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1 Q And who are the officers of Enterprise Research,
2 Inc.?
3 A I believe my wife is one.
4 Q Her name is Lee?
5 A Yes.
6 Q And anybody else?
7 A I don't know whether Ann Mikasa is or not. I
8 don't think so.
9 Q Okay. Do you maintain any transmittal letters
10 from counsel of the materials they asked you to review?
11 A That assumes that there are transmittal letters.
12 Is your question assume that there are --
13 Q Yes. Well, when Ms. Browdy has sent you
14 documents, does it come in the dark of night in a brown
15 plain envelope, or I'm assuming there's something that
16 indicates where it's coming from; right?
17 MS. BROWDY: Objection to the form.
18 Argumentative.
19 You can answer if you can.
20 THE WITNESS: I use -- Dr. Ingberman manages
21 documents for me, and I precisely don't know what is the
22 nature of any cover letter that may come with the
23 documents.
24 BY MR. GOLDSTEIN:

25 Q And who maintains your curriculum vitae for you?
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1 A Well, two people: Francis Darnley -- well,
2 actually probably more than two, but I have an assistant
3 at
4 LECG and I have an assistant at the university, and I
5 give
6 them both things, and their job is to coordinate and make
7 sure that everything I give them ends up on my CV in the
8 right place.
9 Q Okay. Last question. Did any attorneys assist
10 you in the preparation of Exhibit 3, which is the
11 material,
12 the reliance materials? This right here.
13 A Well, in the actual physical preparation of the
14 exhibit?
15 Q Well, no, in terms of typing it. I'm wanting to
16 be global in my question.
17 A Oh.
18 Q I want to know the extent to which attorneys have

16 had a play or a part in the finished product which is
17 before me in any respect.
18 A Well, to my knowledge they have not been involved
19 in the physical preparation of the document.
20 Materials that are here have been identified by
21 myself and Dr. Ingberman as being relevant. Some of
these
22 materials, for instance, I don't know for sure, but it's
23 conceivable that the Bullock transcripts are in here
24 because they were sent to us. I just don't know. So as
25 far as I'm concerned, this was prepared by Dr.
Ingberman.

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1 Whether he had some conversations with Ms. Browdy
2 that enlarge the totality of the documents that are in
3 here, I don't know for sure without consulting with him.
4 MR. GOLDSTEIN: Okay. Very good. I think that
5 concludes the questioning that I have, and let's go off
the
6 record for a second.
7 (Discussion off the record.)
8 MS. BROWDY: What I wanted to note is in response
9 to requests by the plaintiffs, we have marked some of
these
10 documents, but we should get a little better record here
11 while we have the court reporter.
12 So Exhibit 1 was marked, and that was the
13 summary, I forgot exactly how he described it, but the
14 summary of his opinions. And the record will reflect
15 exactly how he described it.
16 Exhibit 2 was the billing summaries.
17 Exhibit 3 was this index. Accompanying the
18 index that's been marked as Exhibit 3, there's a CD, but
19 the CD has not been marked.
20 Exhibit 4 was the doctor's CV, and he also
21 brought his expert report in the U.S. suit which has not
22 been marked.
23 Are we going to have that marked?
24 MR. GOLDSTEIN: Mark that as 5, yes.
25 MS. BROWDY: I will mark that as Exhibit 5.

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1 That is Dr. Teece's report in the U.S. suit.
2 (Plaintiff's Exhibit 5 was marked
3 for identification by the Court Reporter
4 and a copy is attached hereto.)
5 MS. BROWDY: Accompanying Exhibit 5 we also
6 produced three CDs and an accompanying index that
referred
7 to the documents, I believe, that were cited in Exhibit
5,
8 but this additional index and the three CDs have not been
9 marked as an exhibit.
10 And then he also brought with the expert report
11 of Peter English which I don't think had been listed on
12 index Exhibit 3. And we haven't marked that either.
13 MR. GOLDSTEIN: Okay. Well, why don't we go
14 ahead and mark the Peter English report as number 6. I'd
15 rather not mark the CDs.
16 MS. BROWDY: That's fine.
17 (Plaintiff's Exhibit 6 was marked
18 for identification by the Court Reporter

19 and a copy is attached hereto.)
20 BY MR. GOLDSTEIN:
21 Q Doctor, just as one final follow-up.
22 Who pressed those CDs that we have in front of
23 us? Was it somebody at your office?
24 A Yes.
25 Q Who was that?
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1 A Well, Dr. Ingberman managed the process.
2 Whether he did it himself or delegated it to somebody
else,
3 I just don't know.
4 MR. GOLDSTEIN: Okay. Why don't we enter into a
5 similar stipulation we did the other day, that the court
6 reporter can be relieved of her duties under the Code;
that
7 a copy -- do you guys both want to order a copy?
8 MS. BROWDY: Yes.
9 MS. AMEN: Yes.
10 MR. GOLDSTEIN: That a copy of the transcript
11 will be reviewed and signed under penalty of perjury by
the
12 witness let's say seven days after receipt.
13 MS. BROWDY: I think last time we agreed to ten.
14 THE REPORTER: You said a copy?
15 MR. GOLDSTEIN: Let's just say sign the
16 original.
17 And if the original is not signed within ten days
18 after receipt, then a certified copy may be used for any
19 purpose as if signed if lost, misplaced, or otherwise
not
20 able to be located. So stipulated?
21 MS. BROWDY: Yes. All right.
22 THE REPORTER: You didn't say where you wanted me
23 to send the original.
24 MS. BROWDY: You should send it to me. That's
25 Michelle Browdy at Kirkland & Ellis.

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1 (Whereupon, the deposition concluded
2 at the hour of 1:35 p.m.)

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1 I certify or declare under penalty of perjury
2 that the foregoing testimony is true and correct.

Executed

3 at _____, California, this _____ day of
4 _____, 2003.

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9 DAVID TEECE

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1 STATE OF CALIFORNIA)

2) ss

3 COUNTY OF LOS ANGELES)

4 I, JENNIFER A. HINES, Certified Shorthand Reporter
5 qualified in and for the State of California, do hereby
6 certify:

7 That the foregoing transcript is a true and
8 correct transcription of my original stenographic notes.

9 I further certify that I am neither attorney or
10 counsel for, nor related to or employed by any of the
11 parties to the action in which this proceeding was
taken;

12 and furthermore, that I am not a relative or employee of
13 any attorney or counsel employed by the parties hereto
or

14 financially interested in the action.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 8th day of May, 2003.

17

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19 JENNIFER A. HINES

CSR No. 6029/RPR/CRR

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